GENERAL STATUTES OF NORTH CAROLINA

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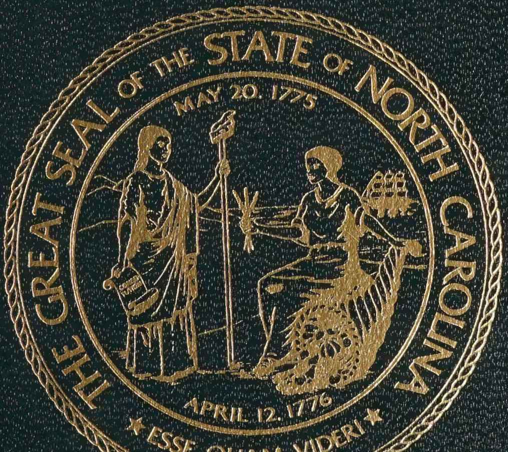
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GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

2008 INTERIM SUPPLEMENT

Volume 2

Chapters 105A to 168A
NC Constitution
US Constitution
Tables

CONTAINING GENERAL LAWS OF NORTH CAROLINA
ENACTED BY THE GENERAL ASSEMBLY

Prepared under the Supervision of
THE DEPARTMENT OF JUSTICE
OF THE STATE OF NORTH CAROLINA
by
the Editorial Staff of the Publishers

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Preface

This Volume contains the general laws of a permanent nature enacted by the General Assembly at the 2008 Regular Session, which are within Chapters 2008-1 through 2008-229, and brings to date the annotations included therein.

A majority of the Session Laws are made effective upon becoming law, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 60 days after the adjournment of the session" in which passed.

For detailed research on any subject, both within this volume and the General Statutes as a whole, see the General Index to the General Statutes.

Beginning with formal opinions issued by the North Carolina Attorney General on July 1, 1969, selected opinions which construe a specific statute are cited in the annotations to that statute. For a copy of an opinion or of its headnotes, write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

This recompiled volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any suggestions they may have for improving the General Statutes to the Department, or to LexisNexis, Charlottesville, Virginia.

ROY COOPER
Attorney General

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Roy Cooper
Attorney General

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 2008 Regular Session affecting Chapters 2008-1 through 2008-229.

Annotations:

This publication contains annotations taken from decisions of the North Carolina Supreme Court, decisions of the North Carolina Court of Appeals, and decisions of the appropriate federal courts posted on LEXIS through September 19, 2008. These cases will be printed in the following reporters:

South Eastern Reporter 2nd Series.
Federal Reporter 3rd Series.
Federal Supplement 2nd Series.
Federal Rules Decisions.
Bankruptcy Reports.
Supreme Court Reporter.

Additionally, annotations have been taken from the following sources:

North Carolina Law Review.
Wake Forest Law Review.
Campbell Law Review.
Duke Law Journal.
North Carolina Central Law Journal.
Opinions of the Attorney General.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1 of the General Statues. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 of the General Statutes for the complete User's Guide.

Abbreviations

(The abbreviations below are those found in the General Statutes that refer to prior codes.)

P.R.	Potter's Revisal (1821,1827)
R.S.	Revised Statutes (1837)
R.C.	Revised Code (1854)
C.C.P.	Code of Civil Procedure (1868)
Code	Code (1883)
Rev.	Revisal of 1905
C.S.	Consolidated Statutes (1919, 1924)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

December 2008

I, Roy Cooper, Attorney General of North Carolina, do hereby certify that the foregoing 2008 Interim Supplement to the General Statutes of North Carolina was prepared and published by LexisNexis under the supervision of the Department of Justice of the State of North Carolina.

ROY COOPER
Attorney General of North Carolina

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The General Statutes of North Carolina
2008 Interim Supplement

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Department of Agriculture and Consumer Services.

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ARTICLE 1.

Department of Agriculture and Consumer Services.

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Editor's Note. — For information regarding Agricultural Drought Response Cost Share Program, see Session Laws 2008-107, s. 12.4(a)-(e) under G.S. 143-215.74 and 143B-294.

Part 5. Cooperation Between Department and United States Department of Agriculture, and County Commissioners.

§ 106-24. Collection and publication of information relating to agriculture; cooperation.

(a) The Department of Agriculture and Consumer Services shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The Department is authorized to use sample surveys to collect primary data relating to agriculture. The Department is authorized to cooperate with the United States Department of Agriculture and the several boards of county commissioners of the State, to accomplish the purpose of this Part.

(b) The Department of Agriculture and Consumer Services shall annually collect information on water use by persons who withdraw 10,000 gallons per day or more of water from the surface or groundwater sources of the State for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products. The information shall be collected by survey conducted pursuant to subsection (a) of this section and in accordance with Title 7 United States Code Section 2276 (Confidential Information Protection and Statistical Efficiency Act). The Department shall develop the survey form in consultation with the Department of Environment and Natural Resources. The Department shall report the results of the water use survey to the Environmental Review Commission no later than July 1 of each year and shall provide a copy of the report to the Department of Environment and Natural Resources. The report shall include recommendations about modifications to the survey, including changes in the gallons per day threshold for water use data collection. The report shall provide agricultural water use data by county. If the county is located in more than one river basin, the report shall separate the county data to show agricultural water use by river basin within the county. If publication of county or watershed data would result in disclosure of an individual operation's water use, the data will be combined with data from another county or watershed. (1921, c. 201, s. 1; C.S., s. 4689(a); 1941, c. 343; 1975, c. 611, s. 1; 1979, c. 228, s. 1; 1997-261, s. 25; 2008-143, s. 2(a).)

Editor's Note. — Session Laws 2008-143, s. 2(b), provides that the first report required by subsection (b) of G.S. 106-24 shall be submitted on or before July 1, 2009.

Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

Effect of Amendments. — Session Laws 2008-143, s. 2(a), effective October 1, 2008, added the subsection (a) designator; and added subsection (b).

ARTICLE 31C.

North Carolina Commercial Feed Law of 1973.

§ 106-284.33. Definitions of words and terms.

When used in this Article:

(1) The term "Board" means the North Carolina State Board of Agriculture.

(2) The term "brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(3) The term "canned pet food" means any commercial feed packed in cans or hermetically sealed containers, and used or intended for use as food for pets.

(4) The term "commercial feed" means all materials, except whole unmixed seed such as corn, including physically altered entire unmixed seeds when not adulterated within the meaning of G.S. 106-284.38(1), which are distributed for use as feed or for mixing in feed; provided, that the Board by regulation may exempt from this definition, or from specific provisions of this Article, hay, straw, stover, silage, cobs, husks, hulls, unpasteurized milk, and individual chemical compounds or substances which are not intermixed or mixed with other materials, and are not adulterated within the meaning of G.S. 106-284.38(1).

(4a) The term "contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract between that person and a manufacturer of commercial feeds whereby such commercial feed is supplied, furnished, or otherwise provided to such person by the said manufacturer and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product produced by the independent contractor.

(5) The term "customer-formula feed" means commercial feed, each batch of which is mixed according to the formula of the customer, furnished in writing over the signature of the customer or his designated agent with each batch moved directly from the manufacturer to the customer and not stocked or displayed in a dealer's warehouse or sales area and not resold or redistributed to any person.

(6) The term "distribute" means to offer for sale, sell, exchange, or barter, commercial feed.

(7) The term "distributor" means any person who distributes.

(8) The term "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

(9) The term "feed ingredient" means each of the constituent materials making up a commercial feed.

(10) The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(11) The term "labeling" means all labels and other written, printed, or graphic matter (i) upon a commercial feed or any of its containers or wrapper or (ii) accompanying such commercial feed, or advertisement, brochures, posters, television and radio announcements used in promoting the sale of such commercial feed.

(12) The term "manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

(13) The term "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(14) The term "official sample" means a sample of feed taken by the Commissioner or his agent in accordance with the provisions of G.S. 106-284.42(a), (c) or (e).

(15) The terms "percent" or "percentage" means percentage by weight, except in G.S. 106-284.42 where these terms refer to the retail value of the lot of commercial feed.

(16) The term "permitted analytical variation" means allowance for the inherent variability in sampling and laboratory analysis in guaranteed components. Manufacturing variations and their effect on the guaranteed components are not included in such values.

(17) The term "person" means an individual, a partnership, a corporation, an association, and any other legal entity.

(18) The term "pet" means any domesticated animal normally maintained in or near the household(s) of the owner(s) thereof.

(19) The term "pet food" means any commercial feed prepared and distributed for consumption by pets.

(20) The term "product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

(21) The term "specialty pet" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

(22) The term "specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(23) The term "ton" means a net weight of 2,000 pounds avoirdupois. (1973, c. 771, s. 4; 1975, c. 900, s. 1; c. 961, s. 1; 2008-88, s. 3.)

Editor's Note. — Session Laws 2008-88, s. 1, provides: "Pursuant to G.S. 150B-21.3(b1), 02 NCAC 09E .0116 (Unpasteurized Milk), as adopted by the North Carolina Board of Agriculture on September 7, 2007, and approved by the Rules Review Commission on October 18, 2007, is disapproved."

Effect of Amendments. — Session Laws 2008-88, s. 3, effective July 11, 2008, inserted "unpasteurized milk" in subdivision (4).

§ 106-284.41. Rules and regulations.

Editor's Note. — Session Laws 2008-88, s. 1 provides: "Pursuant to G.S. 150B-21.3(b1), 02 NCAC 09E .0116 (Unpasteurized Milk), as adopted by the North Carolina Board of Agriculture on September 7, 2007, and approved by the Rules Review Commission on October 18, 2007, is disapproved."

Article 34.

Animal Diseases.

Part 9. Control of Livestock Diseases.

§ 106-403. (Effective until October 1, 2009) Disposition of dead domesticated animals.

CASE NOTES

Cited in State v. Hinkle, — N.C. App. —, 659 S.E.2d 34, 2008 N.C. App. LEXIS 705 (2008).

§ 106-405. (Effective until October 1, 2009) Prohibited acts; penalties.

CASE NOTES

Cited in State v. Hinkle, — N.C. App. —, 659 S.E.2d 34, 2008 N.C. App. LEXIS 705 (2008).

§ 106-665. Plant food deficiency.

(a) The Commissioner, in determining for administrative purposes, whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in subdivision (15) of G.S. 106-657, and as provided for in subsections (b), (c), and (d) of G.S. 106-662.

(b) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any ingredient, a penalty shall be assessed in accordance with the following provisions:

(1) For total nitrogen, available phosphate, or available potash: A penalty of three times the value of the deficiency if the deficiency is in excess of the following investigational allowances.

Guarantee Percentage	*Total Nitrogen*	*Available Phosphoric*	*Soluble Potash Percentage*
4 or less	0.49	0.67	0.41
5	0.51	0.67	0.43
6	0.52	0.67	0.47
7	0.54	0.68	0.53
8	0.55	0.68	0.60
9	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

Provided that when the found relative value of a sample is equal to or exceeds the guaranteed relative value, an overage in primary nutrients may compensate for a deficiency in another primary nutrient up to 10% of the guarantee of the deficient nutrient, not to exceed two units. No compensation shall be allowed toward a deficiency if the overage does not compensate for the entire amount of the deficiency or if the deficiency exceeds 10% of the guarantee or the deficiency exceeds two units. If more than one primary nutrient is in penalty status, no compensation shall be allowed.

(2) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five percent (5%) (or 100 pounds of calcium carbonate equivalent per ton) from the guarantee, a penalty of fifty cents (50¢) per ton for each 50 pounds calcium carbonate equivalent, or fraction thereof in excess of the 100 pounds allowed, shall be assessed and paid as is prescribed in subsection (c) of this section.

(3) Chlorine: If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than 0.5 of one percent, a penalty shall be assessed equal to ten percent (10%) of the value of the fertilizer for each additional 0.5 of one percent of excess or fraction thereof.

(4) Water insoluble nitrogen: A penalty of three times the value of the deficiency shall be assessed, if such deficiency is in excess of 0.15 of one percent on goods guaranteed up to and including five-tenths percent; 0.20 of one percent on goods guaranteed from five-tenths percent to one percent; 0.30 of one percent on goods guaranteed from one percent to two percent; 0.50 of one percent on goods guaranteed above two percent and up to and including five percent; and 1.00 percent on goods guaranteed over five percent.

(5) Nitrate nitrogen: A penalty of three times the value of the deficiency shall be assessed if the deficiency shall exceed 0.20 of one percent for goods guaranteed up to and including five-tenths percent; 0.25 of one percent for goods guaranteed from five-tenths to one percent; 0.30 of

one percent for goods guaranteed from one to two percent; and 0.35 of one percent for goods guaranteed above two percent up to four percent. Tolerances for goods guaranteed above four percent shall be the same as for total nitrogen.

(6) Total magnesium: If the magnesium content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed, a penalty of one dollar ($1.00) per ton shall be assessed for each 0.15 of one percent additional deficiency or fraction thereof.

(7) Total calcium: If the calcium content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed, a penalty of one dollar ($1.00) per ton shall be assessed for each 0.35 of one percent additional deficiency or fraction thereof.

(8) Sulfur: If the sulfur content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed in the case of all mixed fertilizers, including mixed fertilizers branded for tobacco, a penalty of one dollar ($1.00) per ton for each 0.50 of one percent additional excess or fraction thereof, shall be assessed.

(9) Deficiencies or excesses in any other constituent or constituents covered under subdivisions (6) and (7), subsection (a), G.S. 106-660 which the registrant is required to or may guarantee shall be evaluated by the Commissioner and penalties therefor shall be prescribed by the Commissioner in fertilizer regulations.

(10) For micro-nutrients as are not specifically covered in this Article, a tolerance of twenty-five percent (25%) of the guarantee will be allowed for each element, not to exceed 1/2 unit (.5%) on guarantees up to 15 units or percent and not to exceed one unit (1%) on guarantees above 15 units or percent.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the Commissioner to the distributor, receipts taken therefor, and promptly forwarded to the Commissioner; provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumer cannot be found, the clear proceeds of the penalty assessed shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Such sums as shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall not be subject to claim by the consumer after 12 months from the date of assessment. (1947, c. 1086, s. 8; 1955, c. 354, s. 4; 1977, c. 303, s. 11; 1983, c. 146, s. 5; 1993, c. 216, s. 6; 1997-261, s. 109; 1998-215, s. 21.)

Editor's Note. — The section is set out in the supplement to correct an error appearing in the bound volume.

Chapter 108A.

Social Services.

Article 2.

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108A-70.22. [Repealed.]
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108A-70.24. [Repealed.]

ARTICLE 1.

County Administration.

Part 2. County Director of Social Services.

§ 108A-14. Duties and responsibilities.

CASE NOTES

Juvenile Petition for Termination of Parental Rights. — Trial court had subject matter jurisdiction over the juvenile petition filed by the caseworker even though the caseworker did not sign it and, thus, the trial court could enter its termination of parental rights order regarding the father; while the caseworker did not specifically state in the petition that the caseworker was an authorized representative of the director of the Department of Social Services, the caseworker's verification of the petition was sufficient for the trial court to exercise jurisdiction over the case. In re D.D.F., — N.C. App. —, 654 S.E.2d 1, 2007 N.C. App. LEXIS 2447 (2007).

ARTICLE 2.

Programs of Public Assistance.

Part 1. In General.

§ 108A-25.2. Exemption from limitations for individuals convicted of certain drug-related felonies.

Individuals convicted of Class H or I controlled substance felony offenses in this State shall be eligible to participate in the Work First Program and the food and nutrition services program:

(1) Six months after release from custody if no additional controlled substance felony offense is committed during that period and successful completion of or continuous active participation in a required

substance abuse treatment program determined appropriate by the area mental health authority; or

(2) If not committed to custody, six months after the date of conviction if no additional controlled substance felony offense is committed during that period and successful completion of or continuous active participation in a required substance abuse treatment program determined appropriate by the area mental health authority.

A county department of social services shall require individuals who are eligible for Work First Program assistance and electronic food and nutrition benefits pursuant to this section to undergo substance abuse treatment as a condition for receiving Work First Program or electronic food and nutrition benefits, if funds and programs are available and to the extent allowed by federal law. (1997-443, s. 12.4; 2007-97, s. 4; 2008-187, s. 17.)

Editor's Note. — This section was amended by Session Laws 2007-97, s. 4, in the coded bill drafting format provided by G.S. 120-20.1. The redlining in the act resulted in the word "and" being duplicated in the introductory paragraph. Session Laws 2008-187, s. 17, amended the section by deleting the extra "and."

Effect of Amendments. —

Session Laws 2008-187, s. 17, effective August 7, 2008, deleted "and" following "Work First Program and" in the introductory paragraph.

Part 2. Work First Program.

§ 108A-27. (See editor's note) Authorization and description of Work First Program; Work First Program changes; designation of Electing and Standard Program Counties.

Editor's Note. —

Session Laws 2008-107, s. 10.13(j) provides that "G.S. 108A-27(c) reads as rewritten" when in fact it is G.S. 108A-70.27(c) that is set out in the text of the amendment. At the direction of the Revisor of Statutes, the amendment has not been given effect.

Session Laws 2008-107, s. 1.2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008.'"

Session Laws 2008-107, s. 30.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5, is a severability clause.

§ 108A-27.11. Work First Program funding.

Local Modification. — Beaufort, Caldwell, Catawba, Iredell, Lenoir, Lincoln, Macon, Wilson: 2008-69 (as to hold-harmless provision for electing counties in the 2008-2009 fiscal year).

Part 3. State-County Special Assistance for Adults.

§ 108A-40. Authorization of State-County Special Assistance for Adults Program.

Editor's Note. — Session Laws 2007-323, s. 10.13(a)-(f), as amended by Session Laws 2008-107, s. 10.2, provides: "(a) The eligibility of Special Assistance recipients residing in adult care homes on August 1, 1995, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from adoption of the Rate Setting Methodology Report and Related Services, providing these recipients are otherwise eligible. The maximum monthly rate for these residents in adult care home facilities shall be one thousand two hundred thirty-one dollars ($1,231) per month per resident.

"(b) Effective January 1, 2007, the maximum monthly rate for residents in adult care home facilities shall be one thousand one hundred forty-eight dollars ($1,148) per month per resident unless adjusted by the Department in accordance with subsection (e) of this section.

"(c) Effective October 1, 2007, the maximum monthly rate for residents in adult care home facilities shall be one thousand one hundred seventy-three dollars ($1,173) per month per resident unless adjusted by the Department in accordance with subsection (e) of this section.

"(c1) Effective January 1, 2009, the maximum monthly rate for residents in adult care home facilities shall be one thousand two hundred seven dollars ($1,207) per month per resident unless adjusted by the Department in accordance with subsection (e) of this section.

"(d) The maximum monthly rate for residents in Alzheimer/Dementia special care units shall be one thousand five hundred fifteen dollars ($1,515) per month per resident unless adjusted by the Department in accordance with subsection (e) of this section.

"(e) Notwithstanding any other provision of this section, the Department of Health and Human Services shall review activities and costs related to the provision of care in adult care homes and shall determine what costs may be considered to properly maximize allowable reimbursement available through Medicaid personal care services for adult care homes (ACH-PCS) under federal law. As determined, and with any necessary approval from the Centers for Medicare and Medicaid Services (CMS), and the approval of the Office of State Budget and Management, the Department may transfer necessary funds from the State-County Special Assistance program within the Division of Social Services to the Division of Medical Assistance and may use those funds as State match to draw down federal matching funds to pay for such activities and costs under Medicaid's personal care services for adult care homes (ACH-PCS), thus maximizing available federal funds. The established rate for State-County Special Assistance set forth in subsections (b) and (c) of this section shall be adjusted by the Department to reflect any transfer of funds from the Division of Social Services to the Division of Medical Assistance and related transfer costs and responsibilities from State-County Special Assistance to the Medicaid personal care services for adult care homes (ACH-PCS). Subject to approval by the Centers for Medicare and Medicaid Services (CMS) and prior to implementing this section, the Department may disregard a limited amount of income for individuals whose countable income exceeds the adjusted State-County Special Assistance rate. The amount of the disregard shall not exceed the difference between the Special Assistance rate prior to the adjustment and the Special Assistance rate after the adjustment and shall be used to pay a portion of the cost of the ACH-PCS and reduce the Medicaid payment for the individual's personal care services provided in an adult care home. In no event shall the reimbursement for services through the ACH-PCS exceed the average cost of the services as determined by the Department from review of cost reports as required and submitted by adult care homes. The Department shall report any transfers of funds and modifications of rates to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

"(f) Effective July 1, 2007, the Department of Health and Human Services shall recommend rates for State-County Special Assistance and for Adult Care Home Personal Care Services. The Department may recommend rates based on appropriate cost methodology and cost reports submitted by adult care homes that receive State-County Special Assistance funds and shall ensure that cost reporting is done for State-County Special Assistance and Adult Care Home Personal Care Services to the same standards as apply to other residential service providers."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2008-161, s. 1, provides: "(a) The Department of Health and Human Services, Division of Aging and Adult Services, and Division of Medical Assistance shall study implementation of an income disregard policy for current State/County Special Assistance and Medicaid residents who are adversely impacted due to cost of living or other income increases.

"(b) The Department of Health and Human Services, Division of Aging and Adult Services, and Division of Medical Assistance shall report the findings and recommendations of the study contained in this section to the Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Appropriations Subcommittee on Health and Human Services, on or before October 1, 2009."

§ 108A-41. (See editor's note) Authorization of State-County Special Assistance for Adults Program.

Editor's Note. — Session Laws 2008-184, s. 1, and Session Laws 2008-161, s. 1, each enacted provisions pertaining to an income disregard policy for those on special assistance. Session Laws 2008-184, s. 1, provides: "The eligibility of Special Assistance residents residing in adult care homes on and after July 1, 2009, shall not be affected because of annual Social Security, SSI, Veteran, and Railroad Retirement Cost of Living Adjustments (COLAs). This policy shall apply only in cases where Special Assistance income eligibility is affected only by Social Security, SSI, Veteran, and Railroad Retirement COLAs and shall not render a Special Assistance recipient eligible if all other eligibility requirements are not met. The maximum monthly rate for these residents shall be the same as for all other residents according to the provisions as set in the Current Operations Appropriations Act, as amended. The Department of Health and Human Services shall apply for the approvals, if any, which are necessary to implement the policy change directed by this section." As of the date of publication, the approvals referred to in Session laws 2008-184, s. 1, have not been received.

Session Laws 2008-161, s. 1, provides: "(a) The Department of Health and Human Services, Division of Aging and Adult Services, and Division of Medical Assistance shall study implementation of an income disregard policy for current State/County Special Assistance and Medicaid residents who are adversely impacted due to cost of living or other income increases.

"(b) The Department of Health and Human Services, Division of Aging and Adult Services, and Division of Medical Assistance shall report the findings and recommendations of the study contained in this section to the Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Appropriations Subcommittee on Health and Human Services, on or before October 1, 2009."

§ 108A-49. Foster care and adoption assistance payments.

Editor's Note. — Session Laws 2007-323, ss. 10.29(a)-(g), as amended by Session Laws 2008-107, s. 10.7, provide: "(a) The maximum rates for State participation in the foster care assistance program are established on a graduated scale as follows:

"(1) $475.00 per child per month for children aged birth through 5;

"(2) $581.00 per child per month for children aged 6 through12; and

"(3) $634.00 per child per month for children aged 13 through 18.

"(b) The maximum rates for the State adoption assistance program are established consistent with the foster care rates as follows:

"(1) $475.00 per child per month for children aged birth through 5;

"(2) $581.00 per child per month for children aged 6 through 12; and

"(3) $634.00 per child per month for children aged 13 through 18.

"(c) In addition to providing board payments to foster and adoptive families of HIV-infected children, as prescribed in Section 23.28 of Chapter 324 of the 1995 Session Laws, any additional funds remaining that were appropriated for this purpose shall be used to provide medical training in avoiding HIV transmission in the home.

"(d) The maximum rates for the State participation in HIV foster care and adoption assistance are established on a graduated scale as follows:

"(1) $800.00 per child per month with indeterminate HIV status;

"(2) $1,000 per child per month confirmed HIV-infected, asymptomatic;

"(3) $1,200 per child per month confirmed HIV-infected, symptomatic; and

"(4) $1,600 per child per month terminally ill with complex care needs.

"(e) The State and a county participating in foster care and adoption assistance shall each contribute fifty percent (50%) of the nonfederal share of the cost of care for a child placed by a county department of social services or child placing agency ina family foster home or residential child care facility. A county shall be held harmless from contributing fifty percent(50%) of the nonfederal share of the cost for a child currently in a family foster home or residential child care facility until the child leaves foster care or experiences a placement change.

"(f) The Department of Health and Human Services may establish foster care and adoption assistance rates based on the United States Department of Agriculture (USDA) 'Expenditures on Children by Families' index subject to State appropriations for each fiscal year.

"(g) This section becomes effective January 1, 2009, and applies to payments made on or after that date."

Session Laws 2008-107, s. 1.2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008.'"

Session Laws 2008-107, s. 30.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Part 5. Food and Nutrition Services.

§ 108A-53. Fraudulent misrepresentation.

(a) Any person, whether provider or recipient or person representing himself as such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any electronic food and nutrition benefit to which that person is not entitled in the amount of four hundred dollars ($400.00) or less shall be guilty of a Class 1 misdemeanor. Whoever knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any electronic food and nutrition benefit to which he is not entitled in an amount more than four hundred dollars ($400.00) shall be guilty of a Class I felony.

(b) Whoever presents, or causes to be presented, electronic food and nutrition benefits for payment or redemption, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Part or the regulations issued pursuant to this Part shall be guilty of a Class 1 misdemeanor.

(c) Whoever receives any electronic food and nutrition benefits for any consumable item knowing that such benefits were procured fraudulently under subsections (a) and/or (b) of this section shall be guilty of a Class 1 misdemeanor.

(d) Whoever receives any electronic food and nutrition benefits for any consumable item whose exchange is prohibited by the United States Department of Agriculture shall be guilty of a Class 1 misdemeanor. (1981, c. 275, s. 1; 1991, c. 523, s. 5; 1993, c. 539, ss. 814, 1299; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 19.5(n); 1996, 2nd Ex. Sess., c. 18, s. 24.31(a); 2007-97, s. 11; 2008-187, s. 18.)

Editor's Note. — Session Laws 2007-97, s. 11, amended the last sentence of subsection (a) of this section by substituting "electronic and nutrition benefit" for "food stamps or authorization cards." The word "[food]" was inserted at the direction of the Revisor of Statutes. The omission of the word "food" in subsection (a) was corrected by the 2008-187, s. 18, amendment.

Effect of Amendments. —

Session Laws 2008-187, s. 18, effective August 7, 2008, inserted "food" following "defraud any electronic" in subsection (a).

Part 6. Medical Assistance Program.

§ 108A-54. (Effective until July 1, 2009) Authorization of Medical Assistance Program.

Effective Dates of 2007 Amendment. — Session Laws 2007-323, s. 31.16.1(c) amends this section. According to the introductory language in s. 31.16.1(c), the amendment is effective July 1, 2009, whereas Session Laws 2007-323, s. 31.16.1(d), made the 2007 amendment effective June 1, 2009, and applicable to Medicaid claims paid on or after that date. Session Laws 2008-107, s. 10.10(c), amended Session Laws 2007-323, s. 31.16.1(d), to remove the effective date language and make the 2007 amendment applicable to Medicaid claims paid by the State on and after June 1, 2009. The version of G.S. 108A-54 set out above does not contain amendments made by Session Laws 2007-323, s. 31.16.1(c).

Editor's Note. — Session Laws 2008-107, s. 1.2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2008-161, s. 1, provides: "(a) The Department of Health and Human Services, Division of Aging and Adult Services, and Division of Medical Assistance shall study implementation of an income disregard policy for current State/County Special Assistance and Medicaid residents who are adversely impacted due to cost of living or other income increases.

"(b) The Department of Health and Human Services, Division of Aging and Adult Services, and Division of Medical Assistance shall report the findings and recommendations of the study contained in this section to the Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Appropriations Subcommittee on Health and Human Services, on or before October 1, 2009."

§ 108A-54. (Effective July 1, 2009) Authorization of Medical Assistance Program.

The Department is authorized to establish a Medicaid Program in accordance with Title XIX of the federal Social Security Act. The Department may adopt rules to implement the Program. The State is responsible for the nonfederal share of the costs of medical services provided under the Program. A county is responsible for the county's cost of administering the Program in that county. (1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1977, 2nd Sess., c. 1219, s. 24; 1981, c. 275, s. 1.; 2007-323, s. 31.16.1(c); 2008-107, s. 10.10(c).)

Editor's Note. — Session Laws 2007-323, s. 31.16.1(c), amends this section. According to the introductory language in s. 31.16.1(c), the amendment is effective July 1, 2009, whereas Session Laws 2007-323, s. 31.16.1(d), made the 2007 amendment effective June 1, 2009, and applicable to Medicaid claims paid on or after that date. Session Laws 2008-107, s. 10.10(c), amended Session Laws 2007-323, s. 31.16.1(d), to remove the effective date language and make the 2007 amendment applicable to Medicaid claims paid by the State on and after that date. The version of G.S. 108A-54 set out above contains amendments made by Session Laws 2007-323, s. 31.16.1(c).

Session Laws 2008-107, s. 10.9(c)-(e), provides: "(c) The Department of Health and Human Services shall develop a comprehensive schedule for the development and implementation of the MMIS that fully incorporates federal and State project management and review requirements. The Department shall ensure that the schedule is as accurate as possible. The initial schedule that includes all activities up to contract award must be provided by October 1, 2008. The design, development, and implementation schedule must be provided by March 1, 2009, as part of the Department's quarterly MMIS reporting requirements. The Department shall submit the schedule to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on

Appropriations and the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. Any change to key milestones in either schedule shall be immediately reported to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division with a full explanation of the reason for the change.

"(d) Beginning March 1, 2009, the Department shall make quarterly reports on changes in the functionality and projected costs of the MMIS. The first quarterly submission shall contain a final report on the contract award to include total costs and functionality of the MMIS. Each report shall be made to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. A copy of the final report on the contract award shall also be submitted to the Joint Legislative Commission on Governmental Operations.

"(e) Upon initiation of the NC MMIS Program Reporting and Analytics Project and the Division of Health Services Regulation (DHSR) Project, the Department shall submit all reports regarding functionality, schedule, and cost in the next regular cycle of reporting identified in subsections (c) and (d) of this section. The Department shall ensure that the solution developed in the Reporting and Analytics Project supports the capability, in its initial implementation, to interface with the North Carolina Teachers and State Employees Health Plan. The costs for this capability shall be negotiated prior to the award of the Reporting and Analytics contract. The Reporting and Analytics solution must be completed simultaneously with the replacement MMIS."

Session Laws 2008-107, s. 10.15A(h1), as amended by Session Laws 2008-118, s. 3.13(a), provides:

"(h1)(1) General Rule. — Notwithstanding any provision of State law or rules to the contrary, this subsection shall govern the process used by a Medicaid applicant or recipient to appeal a determination made by the Department of Health and Human Services to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this subsection, the phrase "adverse determination" means a determination by the Department to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this subsection, all references to an applicant or recipient include the applicant or recipient's parent, guardian, or legal representative; however, notice need only be given to a parent, guardian, or legal representative who has requested in writing to receive the notice.

"(2) Notice. — Except as otherwise provided by federal law or regulation, at least 30 days before the effective date of an adverse determination, the Department shall notify the applicant or recipient, and the provider, if applicable, in writing of the determination and of the applicant's or recipient's right to appeal the determination. The notice shall be mailed on the date indicated on the notice as the date of the determination. The notice shall include:

"a. An identification of the applicant or recipient whose services are being affected by the adverse determination, including full name and Medicaid identification number.

"b. An explanation of what service is being denied, terminated, suspended, or reduced and the reason for the determination.

"c. The specific regulation, statute, or medical policy that supports or requires the adverse determination.

"d. The effective date of the adverse determination.

"e. An explanation of the applicant's or recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an administrative law judge.

"f. An explanation of how the applicant or recipient can request a hearing and a statement that the applicant or recipient may represent himself or use legal counsel, a relative, or other spokesperson.

"g. A statement that the applicant or recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the applicant or recipient, whichever is less, if the applicant or recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.

"h. The name and telephone number of a contact person at the Department to respond in a timely fashion to the applicant's or recipient's questions.

"i. The telephone number by which the applicant or recipient may contact a Legal Aid/Legal Services office.

"j. The appeal request form described in subdivision (4) of this subsection that the applicant or recipient may use to request a hearing.

"(3) Appeals. — Except as provided by this subsection and subsection 10.15A(h2) of this act, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes. The applicant or recipient must request a hearing within 30 days of the mailing of the notice required by subdivision (2) of this subsection by sending an appeal request form to the Office of Administrative Hearings and the Department. The Department shall immediately forward a copy of the notice to the Office of Administrative Hearings electronically. The information contained in the notice is confidential unless the recipient appeals. The Office of Administrative Hearings may dispose of the records after one year. The Department may not influence, limit, or interfere with the applicant's or recipient's decision to request a hearing.

"(4) Appeal Request Form. — Along with the notice required by subdivision (2) of this subsection, the Department shall also provide the applicant or recipient with an appeal request form which shall be no more than one side of one page. The form shall include the following:

"a. A statement that in order to request an appeal, the applicant or recipient must send the form by mail or fax to the address or fax number listed on the form within 30 days of mailing of the notice.

"b. The applicant's or recipient's name, address, telephone number, and Medicaid identification number.

"c. A preprinted statement that indicates that the applicant or recipient would like to appeal the specific adverse determination of which the applicant or recipient was notified in the notice.

"d. A statement informing the applicant or recipient that he or she may choose to be represented by a lawyer, a relative, a friend, or other spokesperson.

"e. A space for the applicant's or recipient's signature and date.

"(5) Final Decision. — After a hearing before an administrative law judge, the judge shall return the decision and record to the Department in accordance with subsection 10.15A(h2) of this act. The Department shall make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly notify the applicant or recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes.

Session Laws 2008-107, s. 10.15A(h2)-(h6), as added by Session Laws 2008-118, s. 3.13(b), provides: "(h2)(1) Application. — This subsection applies only to contested Medicaid cases commenced by Medicaid applicants or recipients under subsection 10.15A(h1) of this act. Except as otherwise provided by subsection 10.15A(h1) and this subsection governing time lines and procedural steps, a contested Medicaid case commenced by a Medicaid applicant or recipient is subject to the provisions of Article 3 of Chapter 150B. To the extent any provision in this subsection or subsection 10.15A(h1) of this act conflicts with another provision in Article 3 of Chapter 150B, this subsection and subsection 10.15A(h1) controls.

"(2) Simple Procedures. — Notwithstanding any other provision of Article 3 of Chapter 150B of the General Statutes, the chief administrative law judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid applicant or recipient in order to complete the case as quickly as possible. To the extent possible, the Hearings Division shall schedule and hear contested Medicaid cases within 45 days of submission of a request for appeal. The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An administrative law judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid applicant or recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing. The administrative law judge may allow brief extensions of the time limits contained in this section for good cause and to ensure that the record is complete. Good cause includes delays resulting from untimely receipt of documentation needed to render a decision and other unavoidable and unforeseen circumstances.

"(3) Mediation. — Upon receipt of an appeal request form as provided by subdivision 10.15A(h1)(4) of this act or other clear request for a hearing by a Medicaid applicant or recipient, the chief administrative law judge shall immediately notify the Mediation Network of North Carolina which shall within five days contact the petitioner to offer mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. If mediation is successful, the mediator shall inform the Hearings Division, which shall confirm with the agency that a settlement has been achieved, and the case shall be dismissed. If the petitioner rejects the offer of mediation or the mediation is unsuccessful, the mediator shall notify the Hearings Division that the case will proceed to hearing. Nothing in this subdivision shall restrict the right to a contested case hearing.

"(4) Burden of Proof. — The petitioner has the burden of proof to show entitlement to a requested benefit or the propriety of requested agency action when the agency has denied the benefit or refused to take the particular action. The agency has the burden of proof when the appeal is from an agency determination to impose a penalty or reduce, terminate, or suspend a benefit previously granted. The party with the burden of proof on any issue has the burden of going forward, and the administrative law judge shall not make any ruling on the preponderance of evidence until the close of all evidence.

"(5) Decision. — The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. The Hearings Division shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing. The judge shall prepare a written decision and send it to the parties. The decision must be sent together with the record to the agency within 20 days of the conclusion of the hearing.

"(h3) From funds available to the Department of Health and Human Services for the 2008-2009 fiscal year, the sum of two million dollars ($2,000,000) shall be transferred by the Department of Health and Human Services to the Office of Administrative Hearings. These funds shall be allocated by the Office of Administrative Hearings for mediation services provided for Medicaid applicant and recipient appeals and to contract for other services necessary to conduct the appeals process.

"(h4) Effective October 1, 2008, the Department of Health and Human Services shall discontinue its current informal appeals process for Medicaid applicants and recipients appealing a determination made by the Department to deny, terminate, suspend, or reduce Medicaid covered services. All such informal appeals by Medicaid applicants or recipients under the current system which are pending on that date and for which a hearing has not been held shall be discontinued and the applicant or recipient offered an opportunity to appeal to the Office of Administrative Hearings in accordance with the provisions of subsection 10.15A(h1) of this act. The Department shall make every effort to resolve or settle all of the backlogged cases prior to the effective date of this act.

"(h5) Nothing in this act shall prevent the Department of Health and Human Services from engaging in an informal review of the case with the applicant or recipient prior to issuing a notice of adverse determination as provided by subsection 10.15A(h1) of this act.

"(h6) The appeals process for Medicaid applicants and recipients established under this section shall expire July 1, 2010. The Department of Health and Human Services and the Office of Administrative Hearings shall each report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on March 1, 2009, October 1, 2009, and March 1, 2010, on the costs, effectiveness, and efficiency of the appeals process for Medicaid applicants and recipients and make recommendations regarding the continuation of the process."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 108A-54.1. Medicaid buy-in for workers with disabilities.

Editor's Note. —

Session Laws 2008-107, s. 10.8, provides: "The Department of Health and Human Services shall implement the Ticket to Work Program on July 1, 2008, whether or not the new MMIS is operational."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 108A-57. Subrogation rights; withholding of information a misdemeanor.

CASE NOTES

Subrogation Rights. —

Trial court properly granted reimbursement to a payor who paid a Medicaid recipient's medical expenses, pursuant to G.S. 108A-57, and did not err in subrogating the settlements subject to the one-third limitation outlined within the statute; moreover, the payor's claim was properly characterized as a lien, and although the trial court improperly labelled the payor as a "beneficiary," that was harmless error. Andrews v. Haygood, — N.C. App. —, 655 S.E.2d 440, 2008 N.C. App. LEXIS 91 (2008).

§ 108A-59. Acceptance of medical assistance constitutes assignment to the State of right to third party benefits; recovery procedure.

CASE NOTES

Subrogation Rights in State's Favor Properly Recognized. — Trial court properly granted reimbursement to a payor who paid a Medicaid recipient's medical expenses, pursuant to G.S. 108A-57, and did not err in subrogating the settlements subject to the one-third limitation outlined within the statute; moreover, the payor's claim was properly characterized as a lien, and although the trial court improperly labelled the payor as a "beneficiary," that was harmless error. Andrews v. Haygood, — N.C. App. —, 655 S.E.2d 440, 2008 N.C. App. LEXIS 91 (2008).

Part 8. Health Insurance Program for Children.

§ 108A-70.18. Definitions.

As used in this Part, unless the context clearly requires otherwise, the term:

(1) "Comprehensive health coverage" means creditable health coverage as defined under Title XXI.

(2) "Family income" has the same meaning as used in determining eligibility for the Medical Assistance Program.

(3) "FPL" or "federal poverty level" means the federal poverty guidelines established by the United States Department of Health and Human Services, as revised each April 1.

(4) "Medical Assistance Program" means the State Medical Assistance Program established under Part 6 of Article 2 of Chapter 108A of the General Statutes.

(4a) "Predecessor Plan" means the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in effect prior to July 1, 2008.

(5) "Program" means The Health Insurance Program for Children established in this Part.

(6) "State Plan" means the State Child Health Plan for the State Children's Health Insurance Program established under Title XXI.

(7) "Title XXI" means Title XXI of the Social Security Act, as added by Pub. L. 105-33, 111 Stat. 552, codified in scattered sections of 42 U.S.C. (1997).

(8) "Uninsured" means the applicant for Program benefits is not covered under any private or employer-sponsored comprehensive health insurance plan on the date of enrollment. (1998-1, s. 1; 1998-166, s. 6; 2000-67, s. 11.8(a); 2000-140, s. 90(d); 2001-424, s. 21.22(b); 2008-107, s. 10.13(d).)

Cross References. — As to North Carolina Health Choice health insurance program for children, see G.S. 135-47 et seq.

Editor's Note. —

Session Laws 2007-323, 10.48(d)-(n), as added by Session Laws 2008-107, s. 10.12(a), provides:

"(d) The Department of Health and Human Services, Division of Medical Assistance, shall implement a health care assistance program, NC Kids' Care, to provide health insurance coverage to children in families with incomes above two hundred percent (200%) and not more than two hundred fifty percent (250%) of the federal poverty level, by expanding the Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes. Except as otherwise provided, all the requirements of Part 8 of Article 2 of Chapter 108A of the General Statutes shall apply to the NC Kids' Care program. The Department shall submit any State Child Health Plan amendments required to implement this section. Eligibility for and benefits under this program are not an entitlement and are subject to availability of funds and other changes to State and federal law.

"(e) Eligibility. — The Department may enroll eligible children based on the availability of funds. Following are the eligibility and other requirements for participation in NC Kids' Care. Children must:

"(1) Be between the ages of birth through 18 years of age;

"(2) Be ineligible for Medicaid, Medicare, or other government sponsored health insurance, except that any child covered under G.S. 108A-70.21(g) as of the effective date of this section shall be eligible for participation in NC Kids' Care as provided in subsection (o) of this section;

"(3) If permitted by federal law, have been uninsured for a period of time established by the Department in accordance with federal law. A child enrolled in NC Health Choice pursuant to Part 8 of Article 1 of Chapter 108A of the General statutes immediately prior to enrollment under NC Kids' Care shall not be required to satisfy a waiting period in order to receive coverage under NC Kids' Care.

"(4) Be in a family whose family income is above two hundred percent (200%) through two hundred fifty percent (250%) of the federal poverty level;

"(5) Be a resident of this State, meet applicable federal citizenship and immigration requirements, and be eligible under federal law; and

"(6) Have paid the monthly premiums required under this section.

"(f) Benefits and Limitations. — Except as otherwise provided in this section for eligibility and cost-sharing requirements, health benefits coverage provided to children eligible for NC Kids' Care shall be the same as coverage provided under Part 8 of Article 2 of Chapter 108A of the General Statutes.

"(g) Community Care of North Carolina. — The Department of Health and Human Services shall provide services to children enrolled in the NC Kids' Care program through Community Care of North Carolina and shall pay Community Care of North Carolina providers a care management fee for these services as allowed under Medicaid.

"(h) Cost-Sharing. — The Department shall require NC Kids' Care enrollees to contribute to the cost of their care through the use of deductibles, co-payments, and premiums as follows:

"(1) No annual enrollment fee. — In lieu of an annual enrollment fee, a monthly premium shall be charged for each child or family enrolled in NC Kids' Care. The Department shall establish a procedure for sharing a portion of premium receipts with each county department of social services to cover the cost of determining eligibility for services under NC Kids' Care.

"(2) Premiums. — The premium amount charged for each child or family shall vary depending on family income. Enrollees shall pay monthly premiums as follows:

"a. Enrollees whose family income is above two hundred percent (200%) through two hundred twenty-five percent (225%) of the federal poverty level shall pay a monthly premium not to exceed thirty dollars ($30.00) per child.

"b. Enrollees whose family income is above two hundred twenty-five percent (225%) through two hundred fifty percent (250%) of the federal poverty level shall pay a monthly premium not to exceed sixty dollars ($60.00) per child.

"(3) Co-payments. — NC Kids' Care enrollees shall be responsible for co-payments to providers as follows:

"a. Ten dollars ($10.00) per child for each primary care physician visit;

"b. Twenty-five dollars ($25.00) per child for each specialty care physician visit;

"c. Twenty-five dollars ($25.00) per child for each physical therapy, occupational therapy, or speech therapy visit;

"d. Thirty dollars ($30.00) per child for each outpatient hospital visit;

"e. Fifty dollars ($50.00) per child for each inpatient hospital visit;

"f. Twenty dollars ($20.00) per child for durable medical equipment, except there shall be no co-payment required for diabetic supplies;

"g. One hundred dollars ($100.00) for each emergency room visit, except the co-payment is waived if the enrollee is admitted to the hospital;

"h. One hundred fifty dollars ($150.00) for each ambulance service, except the co-payment is waived if the enrollee is admitted to the hospital;

"i. Outpatient prescription drugs, as follows:

"1. Five dollars ($5.00) for each generic prescription drug, for each brand-name prescription drug for which there is no generic substitution available, and for each covered over-the-counter medication; and

"2. Twenty dollars ($20.00) for each brand-name prescription drug for which there is a generic substitution available.

"(4) Deductible. — The Department may establish an annual deductible not to exceed two hundred fifty dollars ($250.00) per child.

"(5) The Department shall establish maximum annual cost-sharing limits per individual or family, provided that the total annual aggregate cost-sharing, including premiums, with respect to all children in a family receiving benefits under this section shall not exceed five percent (5%) of the family's income for the year involved.

"(i) Enrollment in NC Kids' Care shall not exceed 15,000 children for the 2008-2009 fiscal year. This enrollment cap shall not be exceeded even if State and federal funds are available to enroll additional children for the current fiscal year.

"(j) The nonfederal costs of NC Kids' Care shall be paid with State funds and enrollee premiums. Counties shall not be required to share in the nonfederal costs of NC Kids' Care.

"(k) To the extent allowed by federal law, providers of services under NC Kids' Care shall be paid at rates equivalent to Medicaid rates, less any applicable co-payments or deductibles.

"(*l*) Administration of NC Kids' Care shall be in accordance with Part 8 of Article 2 of Chapter 108A of the General Statutes.

"(m) Enrollees covered under G.S. 108A-70.21(g) prior to the effective date of subsection (n) of this section may choose to continue coverage under that section through the end of their buy-in coverage period or enroll in NC Kids' Care provided they meet the eligibility requirements, pay the applicable premium, and notify their county department of social services within 60 days of receiving notice of their potential eligibility under NC Kids' Care. For any enrollee electing to transfer coverage from the buy-in program to NC Kids' Care, coverage under NC Kids' Care shall become effective the first day of the next month immediately following the month in which they notified their county department of social services of their intent to enroll in NC Kids' Care.

"(n) This section becomes effective July 1, 2009, or upon the reauthorization of SCHIP. The Department shall not apply for a State Child Health Plan amendment to implement NC Kids' Care until the US Congress acts to reauthorize the State Children's Health Insurance Program with sufficient funding to support the current NC Health Choice program and the provisions of this section. At the time the Department has determined that SCHIP has been reauthorized with sufficient funds, the Department will move forward as quickly as possible to implement NC Kids' Care."

Session Laws 2008-107, s. 10.13(*l*), provides: "The Secretary of the Department of Health and Human Services shall develop and implement a plan for assuming administrative responsibility for the North Carolina Health Choice for Children program by transitioning all administrative oversight and claims processing activities from the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees to the Division of Medical Assistance. The transition of all administrative oversight and claims processing from the State Health Plan to the Division of Medical Assistance shall be completed not later than July 1, 2010. The Secretary shall report to the Joint Legislative Health Care Oversight Committee and the Committee on Employee Hospital and Medical Benefits at least 30 days prior to effecting the transition of the responsibilities for the administration and processing of claims for benefits provided under the North Carolina Health Choice for Children program from the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees to the Department."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 10.13(d), effective July 16, 2008, added subdivision (4a).

§ 108A-70.20. Program established.

The Health Insurance Program for Children is established. The Program shall be known as North Carolina Health Choice for Children, and it shall be administered by the Department of Health and Human Services in accordance with this Part and as required under Title XXI and related federal rules and regulations. Administration of Program benefits and claims processing shall be as provided under Part 5 of Article 3 of Chapter 135 of the General Statutes. (1998-1, s. 1; 2008-107, s. 10.13(e).)

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 10.13(e), effective July 1, 2008, inserted "known as North Carolina Health Choice for Children, and it shall be" near the middle of the paragraph.

§ 108A-70.21. Program eligibility; benefits; enrollment fee and other cost-sharing; coverage from private plans; purchase of extended coverage.

(a) Eligibility. — The Department may enroll eligible children based on availability of funds. Following are eligibility and other requirements for participation in the Program:

(1) Children must:
  - a. Be between the ages of 6 through 18;
  - b. Be ineligible for Medicaid, Medicare, or other federal government-sponsored health insurance;
  - c. Be uninsured;
  - d. Be in a family whose family income is above one hundred percent (100%) through two hundred percent (200%) of the federal poverty level;
  - e. Be a resident of this State and eligible under federal law; and
  - f. Have paid the Program enrollment fee required under this Part.

(2) Proof of family income and residency and declaration of uninsured status shall be provided by the applicant at the time of application for Program coverage. The family member who is legally responsible for the children enrolled in the Program has a duty to report any change in the enrollee's status within 60 days of the change of status.

(3) If a responsible parent is under a court order to provide or maintain health insurance for a child and has failed to comply with the court order, then the child is deemed uninsured for purposes of determining eligibility for Program benefits if at the time of application the custodial parent shows proof of agreement to notify and cooperate with the child support enforcement agency in enforcing the order.

If health insurance other than under the Program is provided to the child after enrollment and prior to the expiration of the eligibility period for which the child is enrolled in the Program, then the child is deemed to be insured and ineligible for continued coverage under the Program. The custodial parent has a duty to notify the Department within 10 days of receipt of the other health insurance, and the Department, upon receipt of notice, shall disenroll the child from the Program. As used in this paragraph, the term "responsible parent" means a person who is under a court order to pay child support.

(4) Except as otherwise provided in this section, enrollment shall be continuous for one year. At the end of each year, applicants may reapply for Program benefits.

(b) **(See Editor's note for effective date)** Benefits. — Except as otherwise provided for eligibility, fees, deductibles, copayments, and other cost sharing charges, health benefits coverage provided to children eligible under the Program shall be equivalent to coverage provided for dependents under the Predecessor Plan.

In addition to the benefits provided under the Predecessor Plan, the following services and supplies are covered under the Health Insurance Program for Children established under this Part:

(1) Dental: Oral examinations, teeth cleaning, and scaling twice during a 12-month period, full mouth X-rays once every 60 months, supplemental bitewing X-rays showing the back of the teeth once during a

12-month period, fluoride applications twice during a 12-month period, fluoride varnish, sealants, simple extractions, therapeutic pulpotomies, prefabricated stainless steel crowns, and routine fillings of amalgam or other tooth colored filling material to restore diseased teeth. No benefits are to be provided for services and materials under this subsection that do not meet the standards accepted by the American Dental Association.

(2) Vision: Scheduled routine eye examinations once every 12 months, eyeglass lenses or contact lenses once every 12 months, routine replacement of eyeglass frames once every 24 months, and optical supplies and solutions when needed. Optical services, supplies, and solutions must be obtained from licensed or certified ophthalmologists, optometrists, or optical dispensing laboratories. Eyeglass lenses are limited to single vision, bifocal, trifocal, or other complex lenses necessary for a Plan enrollee's visual welfare. Coverage for oversized lenses and frames, designer frames, photosensitive lenses, tinted contact lenses, blended lenses, progressive multifocal lenses, coated lenses, and laminated lenses is limited to the coverage for single vision, bifocal, trifocal, or other complex lenses provided by this subsection. Eyeglass frames are limited to those made of zylonite, metal, or a combination of zylonite and metal. All visual aids covered by this subsection require prior approval. Upon prior approval refractions may be covered more often than once every 12 months.

(3) Hearing: Auditory diagnostic testing services and hearing aids and accessories when provided by a licensed or certified audiologist, otolaryngologist, or other approved hearing aid specialist. Prior approval is required for hearing aids, accessories, earmolds, repairs, loaners, and rental aids.

(4) Over-the-counter medications: Selected over-the-counter medications provided the medication is covered under the State Medical Assistance Plan. Coverage shall be subject to the same policies and approvals as required under the Medicaid program.

(5) Routine diagnostic examinations and tests: annual routine diagnostic examinations and tests, including x-rays, blood and blood pressure checks, urine tests, tuberculosis tests, and general health check ups that are medically necessary for the maintenance and improvement of individual health are covered.

The Department shall provide services to children enrolled in the NC Health Choice Program through Community Care of North Carolina and shall pay Community Care of North Carolina providers for these services as allowed under Medicaid.

(b) **(See editor's note for effective date)** Benefits. — Except as otherwise provided for eligibility, fees, deductibles, copayments, and other cost sharing charges, health benefits coverage provided to children eligible under the Program shall be equivalent to coverage provided for dependents under the Predecessor Plan.

In addition to the benefits provided under the Predecessor Plan, the following services and supplies are covered under the Health Insurance Program for Children established under this Part:

(1) Oral examinations, teeth cleaning, and topical fluoride treatments twice during a 12-month period, full mouth X-rays once every 60 months, supplemental bitewing X-rays showing the back of the teeth once during a 12-month period, sealants, extractions, other than impacted teeth or wisdom teeth, therapeutic pulpotomies, space

G.S. 108A-70.21(b) is set out twice. See note.

maintainers, root canal therapy for permanent anterior teeth and permanent first molars, prefabricated stainless steel crowns, and routine fillings of amalgam or other tooth colored filling material to restore diseased teeth.

(1a) Orthognathic surgery to correct functionally impairing malocclusions when orthodontics was approved and initiated while the child was covered by Medicaid and the need for orthognathic surgery was documented in the orthodontic treatment plan.

(2) Vision: Scheduled routine eye examinations once every 12 months, eyeglass lenses or contact lenses once every 12 months, routine replacement of eyeglass frames once every 24 months, and optical supplies and solutions when needed. Optical services, supplies, and solutions must be obtained from licensed or certified ophthalmologists, optometrists, or optical dispensing laboratories. Eyeglass lenses are limited to single vision, bifocal, trifocal, or other complex lenses necessary for a Plan enrollee's visual welfare. Coverage for oversized lenses and frames, designer frames, photosensitive lenses, tinted contact lenses, blended lenses, progressive multifocal lenses, coated lenses, and laminated lenses is limited to the coverage for single vision, bifocal, trifocal, or other complex lenses provided by this subsection. Eyeglass frames are limited to those made of zylonite, metal, or a combination of zylonite and metal. All visual aids covered by this subsection require prior approval. Upon prior approval refractions may be covered more often than once every 12 months.

(3) Hearing: Auditory diagnostic testing services and hearing aids and accessories when provided by a licensed or certified audiologist, otolaryngologist, or other approved hearing aid specialist. Prior approval is required for hearing aids, accessories, earmolds, repairs, loaners, and rental aids.

(4) Over the counter medications: Selected over the counter medications provided the medication is covered under the State Medical Assistance Plan. Coverage shall be subject to the same policies and approvals as required under the Medicaid program.

(5) Routine diagnostic examinations and tests: annual routine diagnostic examinations and tests, including x-rays, blood and blood pressure checks, urine tests, tuberculosis tests, and general health check-ups that are medically necessary for the maintenance and improvement of individual health are covered.

No benefits are to be provided for services and materials under this subsection that do not meet the standards accepted by the American Dental Association.

The Department shall provide services to children enrolled in the NC Health Choice Program through Community Care of North Carolina and shall pay Community Care of North Carolina providers for these services as allowed under Medicaid.

(b1) Payments. — Prescription drug providers shall accept as payment in full, for outpatient prescriptions filled, amounts allowable for prescription drugs under Medicaid. For all other providers, services provided to children enrolled in the Program shall be provided at rates equivalent to one hundred percent (100%) of Medicaid rates, less any co-payments assessed to enrollees under this Part.

(1a) Orthognathic surgery to correct functionally impairing malocclusions when orthodontics was approved and initiated while the child was covered by Medicaid and the need for orthognathic surgery was documented in the orthodontic treatment plan.

(c) Annual Enrollment Fee. — There shall be no enrollment fee for Program coverage for enrollees whose family income is at or below one hundred fifty percent (150%) of the federal poverty level. The enrollment fee for Program coverage for enrollees whose family income is above one hundred fifty percent (150%) through two hundred percent (200%) of the federal poverty level shall be fifty dollars ($50.00) per year per child with a maximum annual enrollment fee of one hundred dollars ($100.00) for two or more children. The enrollment fee shall be collected by the county department of social services and retained to cover the cost of determining eligibility for services under the Program. County departments of social services shall establish procedures for the collection of enrollment fees.

(d) Cost-Sharing. — There shall be no deductibles, copayments, or other cost-sharing charges for families covered under the Program whose family income is at or below one hundred fifty percent (150%) of the federal poverty level, except that fees for outpatient prescription drugs are applicable and shall be one dollar ($1.00) for each outpatient generic prescription drug, for each outpatient brand-name prescription drug for which there is no generic substitution available, and for each covered over-the-counter medication. The fee for each outpatient brand-name prescription drug for which there is a generic substitution available is three dollars ($3.00). Families covered under the Program whose family income is above one hundred fifty percent (150%) of the federal poverty level shall be responsible for copayments to providers as follows:

(1) Five dollars ($5.00) per child for each visit to a provider, except that there shall be no copayment required for well-baby, well-child, or age-appropriate immunization services;

(2) Five dollars ($5.00) per child for each outpatient hospital visit;

(3) A one dollar ($1.00) fee for each outpatient generic prescription drug, for each outpatient brand-name prescription drug for which there is no generic substitution available, and for each covered over-the-counter medication. The fee for each outpatient brand-name prescription drug for which there is a generic substitution available is ten dollars ($10.00).

(4) Twenty dollars ($20.00) for each emergency room visit unless:
  a. The child is admitted to the hospital, or
  b. No other reasonable care was available as determined by the Department.

Copayments required under this subsection for prescription drugs apply only to prescription drugs prescribed on an outpatient basis.

(e) Cost-Sharing Limitations. — The department shall establish maximum annual cost-sharing limits per individual or family, provided that the total annual aggregate cost-sharing, including enrollment fees, with respect to all children in a family receiving benefits under this section shall not exceed five percent (5%) of the family's income for the year involved.

(f) Coverage From Private Plans. — The Department shall, from funds available for the Program, pay the cost for dependent coverage provided under a private insurance plan for persons eligible for coverage under the Program if all of the following conditions are met:

(1) The person eligible for Program coverage requests to obtain dependent coverage from a private insurer in lieu of coverage under the Program and shows proof that coverage under the private plan selected meets the requirements of this subsection;

(2) The dependent coverage under the private plan is actuarially equivalent to the coverage provided under the Program and the private plan does not engage in the exclusive enrollment of children with favorable health care risks;

(3) The cost of dependent coverage under the private plan is the same as or less than the cost of coverage under the Program; and

(4) The total annual aggregate cost-sharing, including fees, paid by the enrollee under the private plan for all dependents covered by the plan, do not exceed five percent (5%) of the enrollee's family income for the year involved.

The Department may reimburse an enrollee for private coverage under this subsection upon a showing of proof that the dependent coverage is in effect for the period for which the enrollee is eligible for the Program.

(g) Purchase of Extended Coverage. — An enrollee in the Program who loses eligibility due to an increase in family income above two hundred fifty percent (250%) of the federal poverty level and up to and including two hundred seventy-five percent (275%) of the federal poverty level may purchase at full premium cost continued coverage under the Program for a period not to exceed one year beginning on the date the enrollee becomes ineligible under the income requirements for the Program. The benefits, copayments, and other conditions of enrollment under the Program applicable to extended coverage purchased under this subsection shall be the same as those applicable to an NC Kids' Care enrollee whose family income equals two hundred fifty percent (250%) of the federal poverty level.

(h) No State Funds for Voluntary Participation. — No State or federal funds shall be used to cover, subsidize, or otherwise offset the cost of coverage obtained under subsection (g) of this section.

(i) No Lifetime Maximum Benefit Limit. — Benefits provided to an enrollee in the Program shall not be subject to a maximum lifetime limit. (1998-1, s. 1; 1999-237, s. 11.9; 2002-126, s. 10.20(a); 2003-284, s. 10.29(a); 2005-276, ss. 10.22(b), 10.22(c), 10.22(d); 2007-323, s. 28.22A(o); 2007-345, s. 12; 2008-107, ss. 10.12(b), (c), 10.13(f), (k); 2008-118, s. 1.6(b), (c).)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above, as amended by S.L. 2008-107, s. 10.13(f), is effective July 1, 2008. The second version of subsection (b) set out above, as amended by S.L. 2008-107, s. 10.13(k), see Editor's notes for effective date.

Health Choice Enrollment Growth Cap. — Session Laws 2008-107, s. 10.14(b)-(e), as amended by Session Laws 2008-118, s. 1.6(d), provides: "(b) The Department of Health and Human Services may, in the NC Health Choice Program for the 2008-2009 fiscal year, allow up to six percent (6.0%) enrollment growth over the number of children enrolled in the NC Health Choice Program on June 30, 2008.

"(c) On January 15, 2009, or upon the convening of the 2009 General Assembly, whichever occurs later, the Department of Health and Human Services shall report to the 2009 General Assembly. The report shall provide the following information:

"(1) The number of children enrolled in NC Health Choice for the month of January 2009, as determined by using December 2008 Pull-Night data.

"(2) Projected enrollment and program costs for each of the remaining six months of the 2008-2009 fiscal year. The projected enrollment shall be based on NC Health Choice enrollment data and program costs from the immediately preceding five fiscal years.

"(3) The status of current expenditures and availability of State and federal funds for the 2008-2009 fiscal year.

"The Department shall submit the report to the Chairs of the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

"(d) If the report submitted pursuant to subsection (c) of this section indicates, or if the Department becomes later aware that growth in NC Health Choice enrollment for the 2008-2009 fiscal year will exceed the maximum six percent (6%) growth allowed under subsection (a) of this section, or if there will be a shortfall of federal funds, then the Department shall notify the Centers for Medicare and Medicaid Services (CMS) that it anticipates a freeze on enrolling new enrollees. The Department will continue to provide monthly reports to the chairs of the House of Representatives Committee on Appropriations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Office of State Budget and Management, and the Joint Legislative Oversight

Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division. If enrollment in NC Health Choice continues to follow the Department's projections that the six percent (6%) cap will be exceeded, or there will be a shortfall of federal funds, then the Department shall formally notify CMS, the Chairs of the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division of a freeze on new enrollees.

"(e) The limitation on enrollment growth under this section may not be exceeded unless Congress has reauthorized SCHIP so as to provide sufficient federal funds or has appropriated additional federal funds for the 2008-2009 fiscal year. If Congress has reauthorized SCHIP to provide sufficient federal funds, then the Department may continue to enroll new enrollees up to an increase of eight and seventy-three one hundredths percent (8.73%) from such funds as are available to the Department."

Editor's Note. — G.S.108A-70.21(b) was amended by Session Laws 2008-10.13(f), effective July 1, 2008. Session Laws 2008-107, s. 10.13(k), as amended by Session Laws 2008-118, s. 1.6(b), states in the introductory language "Effective July 1, 2009, G.S. 108A-70.21(b)(1), as amended by subsection (f) of this section [S.L. 2008-107, s. 10.13], reads as rewritten."

Session Laws 2008-107, s. 10.13(n), as amended by Session Laws 2008-118, s. 1.6(c), provides: "Subsections (a) through (c) and subsections (e) through (j) of this section become effective July 1, 2008. Effective July 1, 2010, G.S. 135-42, as amended by subsection (b) of this section, is repealed. The remainder of this section is effective when this act becomes law [July 16, 2008]."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, ss. 10.12(b), 10.12(c), and 10.13(f), effective July 1, 2008, in subsection (b), substituted "Predecessor Plan" for "State Health Plan for Teachers and State Employees, including optional prepaid plans" in the first paragraph and inserted "Predecessor" preceding "Plan" in the second paragraph; rewrote subdivision (b)(1); substituted "prior approval. Upon prior approval" for "prior approval of the Plan. Upon prior approval by the Plan" in subdivision (b)(2); in subdivision (b)(3), inserted "approved" preceding "hearing aid" and substituted "specialist. Prior approval" for "specialist approved by the Plan. Prior approval of the Plan"; added subdivisions (b)(4) and (b)(5); deleted "Effective January 1, 2006" at the beginning of the last paragraph in subsection (b); in subsection (b1), deleted "effective no later than January 1, 2006", substituted "percent (100%)" for "fifteen percent (115%)", and deleted the last two sentences; inserted "through two hundred percent (200%)" in subsection (c); in subsection (d) and subdivision (d)(3), made minor grammatical changes and inserted "and for each covered over-the-counter medication"; substituted "Department" for "Claims Processing Contractor of the State Health Plan for Teachers and State Employees" in subdivision (d)(4)b; rewrote subsections (e) and (g); added subsection (i).

Session Laws 2008-107, s. 10.13(k), as amended by Session Laws 2008-118, s. 1.6(b), effective July 1, 2009, in subdivision (b)(1), deleted "Dental:" at the beginning, substituted "topical fluoride treatments" for "scaling" and "sealants, extractions, other than impacted teeth or wisdom teeth" for "fluoride applications twice during a twelve-month period, fluoride varnish, sealants, simple extractions" and added "space maintainers, root canal therapy for permanent anterior teeth and permanent first molars", added subdivision (b)(1a); and transferred the last sentence of former subdivision (b)(1) to follow subdivision (b)(1a) as an undesignated paragraph.

§ 108A-70.22: Repealed by Session Laws 2008-107, s. 10.13(g), effective July 1, 2008.

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 108A-70.23. Services for children with special needs established; definition; eligibility; services; limitation; recommendations; no entitlement.

(a) [Special Needs Services Authorized.] The Department shall, from federal funds received and State funds appropriated for the Program, pay for services for children with special needs as authorized under this section. As used in this section, the term "children with special needs" or "special needs child" means children who have been diagnosed as having one or more of the following conditions which in the opinion of the diagnosing physician (i) is likely to continue indefinitely, (ii) interferes with daily routine, and (iii) require extensive medical intervention and extensive family management:

(1) Birth defect, including genetic, congenital, or acquired disorders;
(2) Developmental disability as defined under G.S. 122C-3;
(3) Mental or behavioral disorder; or
(4) Chronic and complex illnesses.

(b) Eligibility for Services. — In order to be eligible for services under this section a special needs child must be enrolled in the Program.

(c) Services Provided. — The services authorized to be provided to children eligible under this section are as follows:

(1) The same level of services as provided for special needs children under the Medical Assistance Program as authorized in the Current Operations Appropriations Act except that:
    a. No services for long-term care shall be provided under this section;
    b. Services for respite care shall be provided only under emergency circumstances; and
    c. The Department may limit services for special needs children after consultation with the Commission on Children with Special Health Care Needs.
(2) Only those services eligible under this section that are not covered or otherwise provided under the Predecessor Plan.

(d) Limitation. — Funds may be expended for services under this section only if the special needs child is enrolled in the Program, the services provided under this section are not provided under the Predecessor Plan and the child meets the definition of a special needs child under this section.

(e) Case Management Services. — The Department shall develop procedures for the provision of case management services by the Department to eligible special needs children. Case management services shall be developed to ensure to the maximum extent possible that services are provided in the most efficient and effective manner considering the special needs of the child. The cost of providing case management services for children with special needs shall be paid from funds available for services under this section.

(f) Recommendations by Commission on Children With Special Health Care Needs. — In implementing this section the Department shall consider the recommendations of the Commission on Children With Special Health Care Needs established under Article 72 of Chapter 143 of the General Statutes. The Department, in consultation with the Commission on Children With Special Health Care Needs shall develop procedures for providing respite care services under emergency circumstances.

(g) No Entitlement. — Nothing in this section shall be construed as entitling any person to services under this section. (1998-1, s. 1; 2003-284, s. 10.29(b); 2008-107, s. 10.13(h).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 10.13(h), effective July 1, 2008, substituted "the Predecessor Plan" for "Part 5 of Article 3 of Chapter 135 of the General Statutes" in subdivision (c)(2) and in subsection (d); substituted "Article 72" for "Article 71" in subsection (f).

§ 108A-70.24: Repealed by Session Laws 2008-107, s. 10.13(i), effective July 1, 2008.

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 108A-70.27. (See editor's note) Data collection; reporting.

Editor's Note. — Session Laws 2008-107, s. 10.13(j), provides that "G.S. 108A-27 reads as rewritten" when in fact it is G.S. 108A-70.27(c) that is set out. At the direction of the Revisor of Statutes, the amendment has not been given effect. If the amendment had taken effect, subsection (c) would read: "(c) The Department shall report periodically to the Joint Legislative Health Care Oversight Committee claims processing data for the Program and any other information the Department or the Committee deems appropriate and relevant to assist the Committee in its review of the Program."

Session Laws 2008-107, s. 1.2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 108A-79. Appeals.

Editor's Note. — Session Laws 2008-107, s. 10.15A(h1), as amended by Session Laws 2008-118, s. 3.13(a), provides: "(h1)(1) General Rule. — Notwithstanding any provision of State law or rules to the contrary, this subsection shall govern the process used by a Medicaid applicant or recipient to appeal a determination made by the Department of Health and Human Services to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this subsection, the phrase 'adverse determination' means a determination by the Department to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this subsection, all references to an applicant or recipient include the applicant or recipient's parent, guardian, or legal representative; however, notice need only be given to a parent, guardian, or legal representative who has requested in writing to receive the notice.

"(2) Notice. — Except as otherwise provided by federal law or regulation, at least 30 days before the effective date of an adverse determination, the Department shall notify the applicant or recipient, and the provider, if applicable, in writing of the determination and of the applicant's or recipient's right to appeal the determination. The notice shall be mailed on the date indicated on the notice as the date of the determination. The notice shall include:

"a. An identification of the applicant or recipient whose services are being affected by the adverse determination, including full name and Medicaid identification number.

"b. An explanation of what service is being denied, terminated, suspended, or reduced and the reason for the determination.

"c. The specific regulation, statute, or medical policy that supports or requires the adverse determination.

"d. The effective date of the adverse determination.

"e. An explanation of the applicant's or recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an administrative law judge.

"f. An explanation of how the applicant or recipient can request a hearing and a statement that the applicant or recipient may represent himself or use legal counsel, a relative, or other spokesperson.

"g. A statement that the applicant or recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the applicant or recipient, whichever is less, if the applicant or recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.

"h. The name and telephone number of a contact person at the Department to respond in a timely fashion to the applicant's or recipient's questions.

"i. The telephone number by which the applicant or recipient may contact a Legal Aid£egal Services office.

"j. The appeal request form described in subdivision (4) of this subsection that the applicant or recipient may use to request a hearing.

"(3) Appeals. — Except as provided by this subsection and subsection 10.15A(h2) of this act, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes. The applicant or recipient must request a hearing within 30 days of the mailing of the notice required by subdivision (2) of this subsection by sending an appeal request form to the Office of Administrative Hearings and the Department. The Department shall immediately forward a copy of the notice to the Office of Administrative Hearings electronically. The information contained in the notice is confidential unless the recipient appeals. The Office of Administrative Hearings may dispose of the records after one year. The Department may not influence, limit, or interfere with the applicant's or recipient's decision to request a hearing.

"(4) Appeal Request Form. — Along with the notice required by subdivision (2) of this subsection, the Department shall also provide the applicant or recipient with an appeal request form which shall be no more than one side of one page. The form shall include the following:

"a. A statement that in order to request an appeal, the applicant or recipient must send the form by mail or fax to the address or fax number listed on the form within 30 days of mailing of the notice.

"b. The applicant's or recipient's name, address, telephone number, and Medicaid identification number.

"c. A preprinted statement that indicates that the applicant or recipient would like to appeal the specific adverse determination of which the applicant or recipient was notified in the notice.

"d. A statement informing the applicant or recipient that he or she may choose to be represented by a lawyer, a relative, a friend, or other spokesperson.

"e. A space for the applicant's or recipient's signature and date.

"(5) Final Decision. — After a hearing before an administrative law judge, the judge shall return the decision and record to the Department in accordance with subsection 10.15A(h2) of this act. The Department shall make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly notify the applicant or recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes.

Session Laws 2008-107, s. 10.15A(h2)-(h6), as added by Session Laws 2008-118, s. 313(b), provides: "(h2)(1) Application. — This subsection applies only to contested Medicaid cases commenced by Medicaid applicants or recipients under subsection 10.15A(h1) of this act. Except as otherwise provided by subsection 10.15A(h1) and this subsection governing time lines and procedural steps, a contested Medicaid case commenced by a Medicaid applicant or recipient is subject to the provisions of Article 3 of Chapter 150B. To the extent any provision in this subsection or subsection 10.15A(h1) of this act conflicts with another provision in Article 3 of Chapter 150B, this subsection and subsection 10.15A(h1) controls.

"(2) Simple Procedures. — Notwithstanding any other provision of Article 3 of Chapter 150B of the General Statutes, the chief administrative law judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid applicant or recipient in order to complete the case as quickly as possible. To the extent possible, the Hearings Division shall schedule and hear contested Medicaid cases within 45 days of submission of a request for appeal. The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An administrative law judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid applicant or recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing. The administrative law judge may allow brief extensions of the time limits contained in this section for good cause and to ensure that the record is complete. Good cause includes delays resulting from untimely receipt of documentation needed to render a decision and other unavoidable and unforeseen circumstances.

"(3) Mediation. — Upon receipt of an appeal request form as provided by subdivision 10.15A(h1)(4) of this act or other clear request for a hearing by a Medicaid applicant or recipient, the chief administrative law judge shall immediately notify the Mediation Network of North Carolina which shall within five days contact the petitioner to offer mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. If mediation is successful, the mediator shall inform the Hearings Division, which shall confirm with the agency that a settlement has been achieved, and the case shall be dismissed. If the petitioner rejects the offer of mediation or the mediation is unsuccessful, the mediator shall notify the Hearings Division that the case will proceed to hearing. Nothing in this subdivision shall restrict the right to a contested case hearing.

"(4) Burden of Proof. — The petitioner has the burden of proof to show entitlement to a requested benefit or the propriety of requested agency action when the agency has denied the benefit or refused to take the particular action. The agency has the burden of proof when the appeal is from an agency determination to impose a penalty or reduce, terminate, or suspend a benefit previously granted. The party with the burden of proof on any issue has the burden of going forward, and the administrative law judge shall not make any ruling on the preponderance of evidence until the close of all evidence.

"(5) Decision. — The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. The Hearings Division shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing. The judge shall prepare a written decision and send it to the parties. The decision must be sent together with the record to the agency within 20 days of the conclusion of the hearing."

"(h3) From funds available to the Department of Health and Human Services for the 2008-2009 fiscal year, the sum of two million dollars ($2,000,000) shall be transferred by the Department of Health and Human Services to the Office of Administrative Hearings. These funds shall be allocated by the Office of Administrative Hearings for mediation services provided for Medicaid applicant and recipient appeals and to contract for other services necessary to conduct the appeals process.

"(h4) Effective October 1, 2008, the Department of Health and Human Services shall discontinue its current informal appeals process for Medicaid applicants and recipients appealing a determination made by the Department to deny, terminate, suspend, or reduce Medicaid covered services. All such informal appeals by Medicaid applicants or recipients under the current system which are pending on that date and for which a hearing has not been held shall be discontinued and the applicant or recipient offered an opportunity to appeal to the Office of Administrative Hearings in accordance with the provisions of subsection 10.15A(h1) of this act. The Department shall make every effort to resolve or settle all of the backlogged cases prior to the effective date of this act.

"(h5) Nothing in this act shall prevent the Department of Health and Human Services from engaging in an informal review of the case with the applicant or recipient prior to issuing a notice of adverse determination as provided by subsection 10.15A(h1) of this act.

"(h6) The appeals process for Medicaid applicants and recipients established under this section shall expire July 1, 2010. The Department of Health and Human Services and the Office of Administrative Hearings shall each report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on March 1, 2009, October 1, 2009, and March 1, 2010, on the costs, effectiveness, and efficiency of the appeals process for Medicaid applicants and recipients and make recommendations regarding the continuation of the process."

Session Laws 2008-107, s. 1.2. provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Chapter 110.

Child Welfare.

Article 9.

Child Support.

§ 110-128. Purposes.

CASE NOTES

Award of Attorney's Fees to the Putative Father. — Trial court abused the court's discretion by ordering a mother to pay a portion of a putative father's attorney's fees, once the putative father was proven not to be the biological father of the mother's child because the assessment of attorney's fees to the mother was contrary to the stated purposes in G.S. 110-128. Guilford County ex rel. Holt v. Puckett, — N.C. App. —, 664 S.E.2d 362, 2008 N.C. App. LEXIS 1471 (2008).

§ 110-131. Compelling disclosure of information respecting the nonsupporting responsible parent of a child receiving public assistance.

CASE NOTES

Putative Father's Attorney's Fees. — Trial court abused the court's discretion by ordering a mother to pay a portion of a putative father's attorney's fees, once the putative father was proven not to be the biological father of the mother's child, because the mother was compelled pursuant to G.S. 110-131 to participate fully in an administrative agency's action, including naming the individual the mother believed was the child's biological father, when the agency commenced an action to establish paternity and recover child support payments made by the agency. Guilford County ex rel. Holt v. Puckett, — N.C. App. —, 664 S.E.2d 362, 2008 N.C. App. LEXIS 1471 (2008).

§ 110-132. Affidavit of parentage and agreement to support.

CASE NOTES

Voluntary Support Agreement Used To Establish Right To Inherit. — G.S. 110-132 does not imply that voluntary support agreements are strictly limited such that they may have no legal implications other than that of child support; it acknowledges that voluntary support agreements, when properly acknowledged and approved by a trial court, have the same force and effect as a trial court's order of support. Accordingly, a voluntary support agreement could be used to establish that an out-of-wedlock child was entitled to inherit under G.S. 29-19(b). In re Estate of Potts, 186 N.C. App. 460, 651 S.E.2d 297, 2007 N.C. App. LEXIS 2188 (2007).

Chapter 113.

Conservation and Development.

SUBCHAPTER IV. CONSERVATION OF MARINE AND ESTUARINE AND WILDLIFE RESOURCES.

Article 14B.

Coastal Recreational Fishing Licenses.

Sec.
113-174.5. (Effective January 1, 2009) Blocks of 10 Ten-Day Coastal Recreational Fishing Licenses.

Article 22.

Regulation of Wildlife.

113-291.4. Regulation of foxes; study of fox and fur-bearer populations.
Sec.
113-296. Disabled Sportsman Program.

Article 22B.

Interstate Wildlife Violator Compact.

113-300.5. Short title.
113-300.6. Governor to execute compact; form of compact.
113-300.7. Appointment of Compact Administrator; implementation; rules; amendments.
113-300.8. Violations.

SUBCHAPTER II. STATE FORESTS AND PARKS.

Article 2C.

State Parks Act.

§ 113-44.14. Additions to and deletions from the State Parks System.

Editor's Note. — The preamble and ss. 1 and 2 of Session Laws 2008-155, provide: "Whereas, Section 5 of Article XIV of the North Carolina Constitution states that it shall be a proper function of the State of North Carolina to acquire and preserve park, recreational, and scenic areas and, in every other appropriate way, to preserve as a part of the common heritage of this State its open lands and places of beauty; and

"Whereas, the General Assembly enacted the State Parks Act in 1987, declaring that the State of North Carolina offers unique archaeological, geological, biological, scenic, and recreational resources, and that such resources are part of the heritage of the people of the State to be preserved and managed by those people for their use and for the use of their visitors and descendants; and

"Whereas, an area on the Avery and Watauga County line, including Hanging Rock Ridge and the headwaters of Dutch Creek, is known to be nationally significant for its excellent examples of the rare High Elevation Rocky Summit community type and other exemplary natural communities; and

"Whereas, rare species found at the site include Heller's blazing star, Blue Ridge goldenrod, spreading avens, American speedwell, wretched sedge, Roan rattlesnakeroot, and golden tundra-moss; and

"Whereas, this site was known by the Cherokee as Yonah-wayah, or Bear's Paw; and

"Whereas, the Bear Paw State Natural Area has been found to possess biological resources of statewide significance; and

"Whereas, the area known as Yellow Mountain in Avery and Mitchell Counties near the Roan Mountain massif is known to be nationally significant for its Grassy Bald and Heath Bald natural community types, as well as its assemblage of other outstanding high elevation natural communities; and

"Whereas, the site supports dozens of rare plant and animal species, including the northern flying squirrel, the spruce-fir moss spider, Gray's lily, Roan Mountain bluet, and the rock gnome lichen; and

"Whereas, the Yellow Mountain State Natural Area has been found to possess biological resources of statewide significance; and

"Whereas, both of these natural areas are valuable for scientific research and education, and as examples of the diverse natural resources of North Carolina; Now, therefore,

"The General Assembly of North Carolina enacts:

"SECTION 1. The General Assembly authorizes the Department of Environment and Natural Resources to add Bear Paw State Natural Area to the State Parks System as provided in G.S. 113-44.14(b).

"SECTION 2. The General Assembly authorizes the Department of Environment and Natural Resources to add Yellow Mountain State Natural Area to the State Parks System as provided in G.S. 113-44.14(b)."

ARTICLE 4C.

Regulation of Open Fires.

§ 113-60.31. Exempt fires; no permit fees.

Local Modification. — (As to subsection (a)) Lake Royale Community in Franklin and Nash Counties: 2008-108.

SUBCHAPTER IV. CONSERVATION OF MARINE AND ESTUARINE AND WILDLIFE RESOURCES.

ARTICLE 14B.

Coastal Recreational Fishing Licenses.

§ 113-174.5. (Effective January 1, 2009) Blocks of 10 Ten-Day Coastal Recreational Fishing Licenses.

(a) The owner of a vessel that is 23 feet or more in length and that is either documented with the United States Coast Guard or registered with the Wildlife Resources Commission pursuant to G.S. 75A-4 may purchase a block of 10 Ten-Day CRFLs issued by the Division. A vessel owner who wishes to obtain a block of 10 Ten-Day CRFLs shall provide the Division with all information required by the Division, including information identifying the vessel on which the Ten-Day CRFLs will be used. Each individual Ten-Day CRFL shall identify the vessel for which the block of 10 Ten-Day CRFLs is issued. An individual Ten-Day CRFL issued as part of a block of 10 Ten-Day CRFLs may only be used on the vessel for which it was issued. An individual Ten-Day CRFL issued as part of a block of 10 Ten-Day CRFLs may not be used on a for hire boat. A block of 10 Ten-Day CRFLs shall expire two years from the date of purchase.

(b) The fee for a block of 10 Ten-Day CRFLs is one hundred fifty dollars ($150.00). An individual Ten-Day CRFL issued as part of a block of 10 Ten-Day CRFLs is valid for a period of 10 consecutive days beginning on the date that the license information is recorded as provided by subsection (c) of this section.

(c) Prior to any recreational fishing occurring under the authority of an individual Ten-Day CRFL issued as part of a block of 10 Ten-Day CRFLs, the vessel owner who purchased the block of 10 Ten-Day CRFLs shall record the date fishing activity will begin and the name, address, telephone number, and date of birth of the individual who will be fishing under the authority of the individual Ten-Day CRFL.

(d) A vessel owner who purchases a block of 10 Ten-Day CRFLs shall comply with all data and information reporting requirements of the Division.

(e) A vessel owner who fails to comply with any of the requirements governing the issuance, use, recording, or reporting of blocks of 10 Ten-Day

CRFLs will be ineligible to purchase any additional blocks of 10 Ten-Day CRFLs for a period of two years from the date of noncompliance. (2008-141, s. 1.)

Editor's Note. — Session Laws 2008-141, s. 2, makes this section effective January 1, 2009.

ARTICLE 15.

Regulation of Coastal Fisheries.

§ 113-200. Fishery Resource Grant Program.

Editor's Note. —

Session Laws 2008-198, s. 3, provides: "The Blue Crab Research Program, administered by the North Carolina Sea Grant Program, shall be renamed the Blue Crab and Shellfish Research Program. Funds appropriated to the Program may be used for research on blue crabs, oysters, scallops, clams, and other shellfish."

ARTICLE 22.

Regulation of Wildlife.

§ 113-291.4. Regulation of foxes; study of fox and fur-bearer populations.

(a) All of the regulatory powers granted the Wildlife Resources Commission generally with respect to game, wild animals, and wildlife apply to foxes unless there are specific overriding restrictions in this section.

(b) Except for any closed season under subsection (h), foxes may be taken with dogs both night and day on a year-round basis.

(c) Foxes may not be taken with firearms except:

(1) As provided in subsection (f) or (i) of this section or G.S. 113-291.4A(a).

(2) As an incidental method of humanely killing them following any lawful method of taking that does not result in death.

(3) When they are lawfully shot under laws and rules pertaining to the destruction of animals committing depredations to property.

(d) Foxes may not be taken with the aid of any electronic calling device.

(e) The Wildlife Resources Commission is directed to improve its capabilities for studying fox and fur-bearer populations generally and, on the basis of its present knowledge and future studies, to implement management methods and impose controls designed to produce optimum fox and fur-bearer populations in the various areas of the State.

(f) If, on the basis of its studies and other information available, the Wildlife Resources Commission determines the population of foxes in an area is fully adequate to support a harvesting of that population, the Wildlife Resources Commission may, upon passage of local legislation permitting same, open a season for taking foxes by trapping. When the season is open for trapping, foxes may also be taken by the use of methods lawful for taking game animals, including the use of firearms. Any bag, possession, or season limits imposed on foxes taken from the area in question will apply in the aggregate to all foxes killed without regard to the method of taking.

(f1) In those counties in which open seasons for taking foxes with weapons and by trapping were established between June 18, 1982, and July 1, 1987, in accordance with the procedure then set forth in subsection (f) of this section, the Wildlife Resources Commission is authorized to continue such seasons from year to year so long as the fox populations of such counties remain adequate to support the resulting harvest. The counties referred to in this subsection are as follows: Caswell, Clay, Graham, Henderson, Hyde, Macon, and Tyrrell.

(g) The Wildlife Resources Commission may provide for the sale of foxes lawfully taken in areas of open season as provided in subsection (f), under a system providing strict controls. The Wildlife Resources Commission must implement a system of tagging foxes and fox furs with a special fox tag, and the Commission may charge two dollars and twenty-five cents ($2.25) for each tag furnished to hunters, trappers, and fur dealers. The fox tag or tags must be procured before taking foxes by any method designed to kill foxes or when the intent is to harvest foxes. The number of tags furnished to any individual may be limited as to area and as to number in accordance with area, bag, possession, or season limits that may be imposed on foxes. No person may continue to hunt or trap foxes under this fox harvesting provision unless he still has at least one valid unused fox tag lawful for use in the area in question. A person hunting foxes with dogs not intending to kill them need not have any fox tag, but any fox accidentally killed by that hunter must be disposed of without sale as provided below, and no foxes not tagged may be sold. The Wildlife Resources Commission may by rule provide reporting and controlled-disposition requirements, not including sale, of foxes killed accidentally by dog hunters, motor vehicles, and in other situations; it may also impose strict controls on the disposition of foxes taken by owners of property under the laws and rules relating to depredations, and authorize sale under controlled conditions of foxes taken under depredation permits.

(h) In any area of the State in which the Wildlife Resources Commission determines that hunting of foxes with dogs has an appreciably harmful effect upon turkey restoration projects, it may declare a closed season for an appropriate length of time upon the taking with dogs of all species of wild animals and birds. Except as otherwise provided in G.S. 113-291.1(d) or (d1), this subsection does not prohibit lawful field trials or the training of dogs.

(i) Upon notification by the State Health Director of the presence of a contagious animal disease in a local fox population, the Commission is authorized to establish such population control measures as are appropriate until notified by public health authorities that the problem is deemed to have passed. (1979, c. 830, s. 1; 1981 (Reg. Sess., 1982), c. 1203, ss. 1-3; 1985, c. 476, s. 2; 1987, c. 726, s. 1; c. 827, s. 98; 1989, c. 504, s. 2; c. 616, s. 4; c. 727, s. 113; 1991, c. 483, s. 1(a), (b); 1993, c. 208, s. 4; 2008-102, s. 3.)

Effect of Amendments. — Session Laws 2008-102, s. 3, effective October 1, 2008, deleted "Stokes" preceding "and Tyrrell" in subsection (f1).

§ 113-296. Disabled Sportsman Program.

(a) The Disabled Sportsman Program is established, to be developed and administered by the Wildlife Resources Commission. The Disabled Sportsman Program shall consist of special hunting and fishing activities adapted to the needs of persons with the disabilities described in subsection (b) of this section.

(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, an individual must be a holder of a Resident Disabled Veteran or Resident Totally Disabled license or must be able to certify through competent medical evidence one of the following disabilities:

(1) Missing fifty percent (50%) or more of one or more limbs, whether by amputation or natural causes.

(2) Paralysis of one or more limbs.
(3) Dysfunction of one or more limbs rendering the individual unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane.
(4) Disease, injury, or defect confining the individual to a wheelchair, walker, or crutches.
(5) Legal deafness.
(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and an individual loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist.

(c) A person who qualifies under subsection (b) of this section may apply for participation in the Disabled Sportsman Program by completing an application supplied by the Wildlife Resources Commission and by supplying the medical evidence necessary to confirm the person's disability. In order to participate in activities under the Program, each disabled participant may be accompanied by an able-bodied companion, who may also participate in the hunting, fishing, or other activity. The Commission shall charge each disabled participant an application fee of ten-dollars ($10.00) to defray the cost of processing the application and administering the special activities provided under the Program. An applicant may apply for any or all available Disabled Sportsman hunts at the time of application for a single fee. Any subsequent applications shall be accompanied by an additional ten-dollar ($10.00) application fee. The participant and the participant's companion shall also obtain any applicable hunting, fishing, or other special license required for the activities.

(d) In developing the Disabled Sportsman Program, the Wildlife Resources Commission shall:
(1) Establish special seasons and bag limits for hunting all or selected species of wildlife;
(2) Authorize the manner for taking wildlife, consistent with State law;
(3) Permit the use of vehicles and other means of conveyance in areas normally closed to such use;
(4) Set special fishing seasons and size and creel limits for inland fish; and
(5) Permit the use of crossbows or other specially equipped bows by persons incapable of arm movement sufficient to operate a longbow, recurve bow, or compound bow, but only during a season for hunting with bow and arrow and only during a special hunt organized and supervised by the Wildlife Resources Commission for the Disabled Sportsman Program; and
(6) Alter any other established rules of the Wildlife Resources Commission pertaining to hunting, fishing, or special activities, as generally applicable or as applicable to game lands, for the purpose of providing access to disabled persons participating in the Disabled Sportsman Program.

The Wildlife Resources Commission may use its game lands for purposes of conducting special activities for the Disabled Sportsman Program, and may enter into agreements with other landholders for purposes of conducting special activities on private lands.

(e) The Wildlife Resources Commission may establish special activities under the Disabled Sportsman Program for any class or classes of disability described in subsection (b) of this section. The Commission shall publicize these activities through the public media and in the Commission's publications to ensure that disabled persons are notified of the activities and informed about the application process.

(f) The Wildlife Resources Commission shall hold at least four special hunting activities under the Disabled Sportsman Program per calendar year.

The Commission shall alternate the location of these special activities so as to provide equal access to disabled persons in all regions of the State. (1993 (Reg. Sess., 1994), c. 557, s. 1; 2005-438, s. 3; 2005-455, s. 1.15; 2008-205, s. 2.)

Effect of Amendments. — Session Laws 2008-205, s. 2, effective July 1, 2008, in subsection (b), inserted "a holder of a Resident Disabled Veteran or Resident Totally Disabled license or must be"; and in subsection (c), substituted "ten-dollars ($10.00)" for "five dollars ($5.00) for each special hunt for disabled persons for which the disabled hunter applies not to exceed ten dollars ($10.00) annually" in the third sentence and added the fourth and fifth sentences.

ARTICLE 22B.

Interstate Wildlife Violator Compact.

§ 113-300.5. Short title.

This Article may be cited as the "Interstate Wildlife Violator Compact." (2008-120, s. 1.)

Editor's Note. — Session Laws 2008-120, s. 2, made this Article effective October 1, 2008.

§ 113-300.6. Governor to execute compact; form of compact.

The Governor shall execute an Interstate Wildlife Violator Compact on behalf of the State of North Carolina with any state of the United States legally joining therein in the form substantially as follows:

Article I

Findings, Declaration of Policy, and Purpose.

(a) The party states find that:
  (1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.
  (2) The protection of their respective wildlife resources can be materially affected by the degree of compliance with state statute, law, regulation, ordinance, or administrative rule relating to the management of those resources.
  (3) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of these natural resources.
  (4) Wildlife resources are valuable without regard to political boundaries; therefore, all persons should be required to comply with wildlife preservation, protection, management, and restoration laws, ordinances, and administrative rules and regulations of all party states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.
  (5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.
  (6) The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the various states.
  (7) In most instances, a person who is cited for a wildlife violation in a state other than the person's home state:

a. Must post collateral or bond to secure appearance for a trial at a later date; or

b. If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

c. Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices described in subdivision (7) of this subsection is to ensure compliance with the terms of a wildlife citation by the person who, if permitted to continue on the person's way after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in the person's home state is permitted to accept the citation from the officer at the scene of the violation and to immediately continue on the person's way after agreeing or being instructed to comply with the terms of the citation.

(10) The practice described in subdivision (7) of this subsection causes unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some alternative arrangement can be made.

(11) The enforcement practices described in subdivision (7) of this subsection consume an undue amount of law enforcement time.

(b) It is the policy of the party states to:

(1) Promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a party state and treat this suspension as if it had occurred in their state.

(3) Allow violators to accept a wildlife citation, except as provided in subsection (b) of Article III, and proceed on the violator's way without delay whether or not the person is a resident in the state in which the citation was issued, provided that the violator's home state is party to this compact.

(4) Report to the appropriate party state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded for their residents which occurred in another party state as if they had occurred in the home state.

(6) Extend cooperation to its fullest extent among the party states for obtaining compliance with the terms of a wildlife citation issued in one party state to a resident of another party state.

(7) Maximize effective use of law enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purposes of this compact are to:

(1) Provide a means through which the party states may participate in a reciprocal program to effectuate policies enumerated in subsection (b) of this Article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within party states in recognition of the person's right of due process and the sovereign status of a party state.

Article II.
Definitions.

Unless the context requires otherwise, the definitions in this Article apply through this compact and are intended only for the implementation of this compact:

(1) "Citation" means any summons, complaint, ticket, penalty assessment, or other official document issued by a wildlife officer or other peace officer for a wildlife violation containing an order which requires the person to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(3) "Compliance" with respect to a citation means the act of answering the citation through appearance at a court, a tribunal, or payment of fines, costs, and surcharges, if any, or both such appearance and payment.

(4) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, or payment of a penalty assessment, or a plea of nolo contendere, or the imposition of a deferred or suspended sentence by the court.

(5) "Court" means a court of law, including Magistrate's Court and the Justice of the Peace Court.

(6) "Home state" means the state of primary residence of a person.

(7) "Issuing state" means the party state which issues a wildlife citation to the violator.

(8) "License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a party state.

(9) "Licensing authority" means the department or division within each party state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(10) "Party state" means any state which enacts legislation to become a member of this wildlife compact.

(11) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of that citation.

(12) "State" means any state, territory, or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico.

(13) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.

(14) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(15) "Wildlife" means all species of animals, including but not necessarily limited to mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a party state. "Wildlife" also means food fish and shellfish as defined by statute, law, regulation, ordinance, or administrative rule in a party state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(16) "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

(17) "Wildlife officer" means any individual authorized by a party state to issue a citation for a wildlife violation.

(18) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

Article III.

Procedures for Issuing State.

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a party state in the same manner as if the person were a resident of the home state and shall not require the person to post collateral to secure appearance, subject to the exceptions contained in subsection (b) of this Article, if the officer receives the person's personal recognizance that the person will comply with the terms of the citation.

(b) Personal recognizance is acceptable:

(1) If not prohibited by local law or the compact manual; and

(2) If the violator provides adequate proof of the violator's identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the party state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain the information specified in the compact manual as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or noncompliance required by subsection (c) of this Article, the licensing authority of the issuing state shall transmit to the licensing authority in the home state of the violator the information in a form and content as contained in the compact manual.

Article IV.

Procedures for Home State.

(a) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of the issuing state, the licensing authority of the home state shall notify the violator, shall initiate a suspension action in accordance with the home state's suspension procedures, and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as if it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual.

Article V.

Reciprocal Recognition of Suspension.

All party states shall recognize the suspension of license privileges of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and could have been the basis for suspension of license privileges in their state.

Article VI.
Applicability of Other Laws.

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any party state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangements between a party state and a nonparty state concerning wildlife law enforcement.

Article VII.
Compact Administrator Procedures.

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a Board of Compact Administrators is established. The Board of Compact Administrators shall be composed of one representative from each of the party states to be known as the Compact Administrator. The Compact Administrator shall be appointed by the head of the licensing authority of each party state and will serve and be subject to removal in accordance with the laws of the state the Compact Administrator represents. A Compact Administrator may provide for the discharge of the Compact Administrator's duties and the performance of the Compact Administrator's functions as a Board member by an alternate. An alternate shall not be entitled to serve unless written notification of the alternate's identity has been given to the Board of Compact Administrators.

(b) Each member of the Board of Compact Administrators shall be entitled to one vote. No action of the Board of Compact Administrators shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor thereof. Action by the Board of Compact Administrators shall be only at a meeting at which a majority of the party states are represented.

(c) The Board of Compact Administrators shall elect annually, from its membership, a Chair and Vice-Chair.

(d) The Board of Compact Administrators shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party state, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The Board of Compact Administrators may accept for any of its purposes and functions under this compact all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and may receive, utilize, and dispose of the same.

(f) The Board of Compact Administrators may contract with or accept services or personnel from any governmental or intergovernmental agency, individual, firm, corporation, or any private nonprofit organization or institution.

(g) The Board of Compact Administrators shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to Board of Compact Administrators action shall be contained in the compact manual.

Article VIII.
Entry into Compact and Withdrawal.

(a) This compact shall become effective when it has been adopted by at least two states.

(b)(1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the Chair of the Board of Compact Administrators.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

- a. A citation of the authority by which the state is empowered to become a party to this compact;
- b. Agreement to comply with the terms and provisions of the compact; and
- c. That compact entry is with all states then party to the compact and with any state that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying state, but shall not be less than 60 days after notice has been given by the Chair of the Board of Compact Administrators or by the secretariat of the Board to each party state that the resolution from the applying state has been received.

(c) A party state may withdraw from this compact by official written notice to the other party states, but a withdrawal shall not take effect until 90 days after notice of withdrawal is given. The notice shall be directed to the Compact Administrator of each member state. No withdrawal shall affect the validity of this compact as to the remaining party states.

Article IX.
Amendments to the Compact.

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the Chair of the Board of Compact Administrators and may be initiated by one or more party states.

(b) Adoption of an amendment shall require endorsement by all party states and shall become effective 30 days after the date of the last endorsement.

Article X.
Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (2008-120, s. 1.)

§ 113-300.7. Appointment of Compact Administrator; implementation; rules; amendments.

(a) The Chair of the Wildlife Resources Commission shall appoint the Compact Administrator for North Carolina. The Compact Administrator shall serve at the pleasure of the Chair of the Wildlife Resources Commission.

(b) The Wildlife Resources Commission may suspend or revoke the license, privilege, or right of any person to hunt, fish, trap, possess, or transport wildlife in this State to the extent that the license, privilege, or right has been suspended or revoked by another compact member under the provisions of this Article.

(c) The Wildlife Resources Commission shall adopt rules necessary to carry out the purposes of this Article.

(d) Any proposed amendment to the Compact shall be submitted to the General Assembly as an amendment to G.S. 113-300.6. In order to be endorsed by the State of North Carolina as provided by subsection (b) of Article IX of the Compact, a proposed amendment to the Compact must be enacted into law. (2008-120, s. 1.)

§ 113-300.8. Violations.

It is unlawful for a person whose license, privilege, or right to hunt, fish, trap, possess, or transport wildlife has been suspended or revoked under the provisions of this Article to exercise that right or privilege within this State or to purchase or possess a license granting that right or privilege. A person who hunts, fishes, traps, possesses, or transports wildlife in this State or who purchases or possesses a license to hunt, fish, trap, possess, or transport wildlife in this State in violation of a suspension or revocation under this Article is guilty of a Class 1 misdemeanor. (2008-120, s. 1.)

Chapter 113A.

Pollution Control and Environment.

Article 4A.

Vehicular Surface Areas.

Sec.
113A-70. (Effective April 1, 2009) Definitions.
113A-71. (Effective April 1, 2009) Vehicular surface areas.

Article 18.

Clean Water Management Trust Fund.

Sec.
113A-253.2. North Carolina Conservation Easement Endowment Fund.

ARTICLE 1.

Environmental Policy Act.

§ 113A-8. Major development projects.

CASE NOTES

Applied in Marriott v. Chatham County, — N.C. App. —, 654 S.E.2d 13, 2007 N.C. App. LEXIS 2430 (2007).

§ 113A-8.1. Surface water transfers.

Allocation of Surface Water Resources Study. — Session Laws 2007-518, s. 1(a), as amended by Session Laws 2008-10, s. 1, provides: "The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall study the allocation of surface water resources and their availability and maintenance in the State, including issues related to the transfer of water from one river basin to another, the withdrawal of water for consumptive use, and the accuracy and tolerance of equipment used to measure the flow of water transferred from one river basin to another river basin. The Commission shall evaluate the benefits of establishing formal and informal procedures for negotiating transfers of water from one river basin to another. The Commission shall also study and recommend measures to: (i) ensure that the purposes of the Regional Water Supply Planning Act of 1971, as set out in G.S. 162A-21, are fulfilled; (ii) provide for a comprehensive system for regulating surface water withdrawals for consumptive and nonconsumptive uses; (iii) provide for the establishment of a statewide plan for water resources development projects; (iv) provide for adequate resources for the Department so that it may develop and implement a comprehensive approach to water resources management; (v) ensure that all State laws regulating water resources are consistent with and fully integrated into the comprehensive system for regulating surface water withdrawals and the statewide plan for water resources development projects; and (vi) ensure that potential interstate conflicts related to water resources are avoided or minimized. In the conduct of this study, the Environmental Review Commission may employ independent consultants as provided in G.S. 120-32.02 and G.S. 120-70.44. The Environmental Review Commission may submit interim reports to the 2008 and 2009 regular sessions of the General Assembly and shall submit a final report of its findings and recommendations, including any legislative proposals, to the General Assembly on or before 1 October 2010."

Session Laws 2008-125, s. 2, provides: "As a part of the study by the Environmental Review Commission of the allocation of water resources in this State pursuant to subsection (a) of Section 1 of S.L. 2007-518, the Environmental Review Commission shall study the delineation of major river basins and subbasins within the State. The Commission shall determine whether the definition of "river basin" set out in G.S. 143-215.22G and the accompanying map should be revised. The Commission shall report its findings and recommendations as provided in subsection (a) of Section 1 of S.L. 2007-518, as amended."

Session Laws 2008-143, s. 6, provides: "The Environmental Review Commission, as part of its ongoing study of the allocation of water resources in the State required by Section 1 of S.L. 2007-518, shall study issues related to increasing water supply, including issues related to reservoir construction and State laws and rules governing reservoir construction. The Environmental Review Commission shall report its findings and recommendations, including any legislative proposals, to the General Assembly as provided by Section 1 of S.L. 2007-518, as amended."

Article 4.

Sedimentation Pollution Control Act of 1973.

§ 113A-64.1. Restoration of areas affected by failure to comply.

CASE NOTES

Necessary Party Found. — Although under G.S. 113A-64.1, a county had independent statutory authority to require the operators of a landfill to fix any excess disturbances they might have caused, and under G.S. 113A-64.1, the county's suit seeking injunctive relief did not require the inclusion of any other party besides the operators, a lender that currently owned the property was a necessary party under G.S. 1A-1, N.C. R. Civ. P. 19 as if the lender was not joined as a party, its right to determine the legal use of its property might be abrogated. Durham County v. Graham, — N.C. App. —, 663 S.E.2d 467, 2008 N.C. App. LEXIS 1505 (Aug. 5, 2008).

Necessary Party Not Found. — City was not a necessary party under G.S. 1A-1, N.C. R. Civ. P. 19 in a county's suit seeking injunctive relief under Conn. Gen. Stat. § 113A-64.1, even though the operators of a landfill would have to petition the City for a zoning grant to comply with an injunction, as if the City denied such a petition, the operators could then argue before the trial court that they were unable to comply; the City had no interest in the property, although it might later become an interested party. Durham County v. Graham, — N.C. App. —, 663 S.E.2d 467, 2008 N.C. App. LEXIS 1505 (Aug. 5, 2008).

Lien holders were not necessary parties under G.S. 1A-1, N.C. R. Civ. P. 19 in a county's suit seeking injunctive relief under Conn. Gen. Stat. § 113A-64.1 as even during a foreclosure suit, lien holders were not necessary parties. Durham County v. Graham, — N.C. App. —, 663 S.E.2d 467, 2008 N.C. App. LEXIS 1505 (Aug. 5, 2008).

Article 4A.

Vehicular Surface Areas.

§ 113A-70. (Effective April 1, 2009) Definitions.

(a) The definitions set out in Article 4 of this Chapter apply to this Article.

(b) As used in this section:

(1) "Impervious surface" means any material that prevents the natural infiltration of water into the soil.

(2) "Land-disturbing activity" has the same meaning as in G.S. 113A-52.

(3) "Private passenger vehicle" has the same meaning as in G.S. 20-4.01.

(4) "Vehicular surface area" means an area primarily used for the parking of private passenger vehicles. "Vehicular surface area" includes the means of ingress and egress to the area where private passenger vehicles are parked. "Vehicular surface area" includes any median, traffic island, or other traffic control device or structure contained wholly within the vehicular parking area."Vehicular surface area" does not include covered vehicle parking areas or multilevel vehicle parking areas. (2008-198, s. 8(b).)

Editor's Note. — Session Laws 2008-198, s. 8(b), enacted this Article as G.S. 113A-71 and 113A-72. It has been renumbered as G.S. 113A-70 and 113A-71 at the direction of the Revisor of Statutes.

Session Laws 2008-198, s. 12, makes this Article effective April 1, 2009 and applicable to building permits issued pursuant to G.S. 153A-357 and G.S. 160A-417 for which applications are received on or after that date.

§ 113A-71. (Effective April 1, 2009) Vehicular surface areas.

(a) Alternative Requirements. — For land-disturbing activity that will result in an increase in vehicular surface area of one acre or more, either:

(1) No more than eighty percent (80%) of the surface area of the vehicular surface area may be impervious surface, or

(2) The stormwater runoff generated by the first two inches of rain that fall on at least twenty percent (20%) of the vehicular service area during a storm event must flow to an appropriately sized bioretention area that is designed in accordance with the standards established by the Department.

(b) Building Permit. — No permit shall be issued under G.S. 153A-357 or G.S. 160A-417 for any land-disturbing activity that does not comply with the requirements of this section.

(c) Applicability. — This section does not apply in any area of the State in which any of the following programs is being implemented:

(1) Water Supply Watershed I (WS-I) — 15A NCAC 2B.0212.
(2) Water Supply Watershed II (WS-II) — 15A NCAC 2B.0214.
(3) Water Supply Watershed III (WS-III) — 15A NCAC 2B.0215.
(4) Water Supply Watershed IV (WS-IV) — 15A NCAC 2B.0216.
(5) Freshwater High Quality Waters (HQW) — 15A NCAC 2H.1006.
(6) Freshwater Outstanding Resource Waters (ORW) — 15A NCAC 2H.1007.
(7) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy — 15A NCAC 2B.0235.
(8) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy — 15A NCAC 2B.0258.
(9) The Randleman Lake Water Supply Watershed Nutrient Management Strategy — 15A NCAC 2B.0251.
(10) Phase II Stormwater Management — S.L. 2006-246.
(11) Coastal Stormwater Management — Section 2 of S.L. 2008-211. (2008-198, ss. 8(b), (e), (f).)

Editor's Note. — Session Laws 2008-198, s. 8(b), enacted this Article as G.S. 113A-71 and 113A-72. It has been renumbered as G.S. 113A-70 and 113A-71 at the direction of the Revisor of Statutes.

Session Laws 2008-198, s. 8(f), directed that the Revisor of Statutes substitute the correct session law number [2008-211] for "2008-XXX" in subdivision (c)(11) as rewritten by Session Laws 2008-198, s. 8(e).

Session Laws 2008-198, s. 12, made this Article effective April 1, 2009, and applicable to building permits issued pursuant to G.S. 153A-357 and G.S. 160A-417 for which applications are received on or after that date.

Effect of Amendments. — Session Laws 2008-198, s. 8(e) and (f), effective August 8, 2008, substituted "Coastal Stormwater Management — Section 2 of S.L. 2008-211" for "Stormwater Requirements: Coastal Counties — 15A NCAC 02H.1005" in subdivision (c)(11).

ARTICLE 18.

Clean Water Management Trust Fund.

§ 113A-253.2. North Carolina Conservation Easement Endowment Fund.

(a) The North Carolina Conservation Easement Endowment Fund is established as a special fund in the Office of the State Treasurer. The principal of the Endowment Fund shall consist of a portion of grant funds transferred by the Trustees to the Endowment Fund from the Clean Water Management Trust Fund for stewardship activities related to projects for conservation easements funded from the Clean Water Management Trust Fund. The principal of the Endowment Fund may also consist of any proceeds of any gifts, grants, or contributions to the State that are specifically designated for inclusion in the Endowment Fund and any investment income that is not used in accordance with subsection (b) of this section. The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the endowment investment income only upon the written direction of the Chair of the Board of Trustees. No expenditure or disbursement shall be made from the principal of the Endowment Fund.

(b) The Trustees may authorize the disbursement of the endowment investment income only for activities related to stewardship of conservation easements owned by the State. (2008-107, s. 12.9(a).)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Chapter 114.

Department of Justice.

Article 4.

State Bureau of Investigation.

Part 1. General Powers and Duties of the State Bureau of Investigation.

Sec.
114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.

Part 2. Criminal History Record Checks.

114-19.11B. Criminal record checks of applicants for licensure as massage and bodywork therapists.
114-19.24. Criminal record checks of applicants and of current employees who are involved in the manufacture or production of drivers licenses and identification cards.
114-19.25. Criminal history record checks of applicants for licensure as nursing home administrators.

ARTICLE 1.

Attorney General.

§ 114-2.3. Use of private counsel limited.

Editor's Note. — Session Laws 2007-323, s. 6.9(b), as amended by Session Laws 2008-107, s. 23.1, provides: "(b) The General Assembly finds that a computer system that records tax payments and determines when the payments are overdue directly and primarily relates to the collection of overdue tax debts and that the proceeds of the collection assistance fee imposed by G.S. 105-243.1 may be applied to the cost of the computer system. The Department of Revenue is authorized to use funds in the 20% Collection Assistance Fee Account, Budget Code 24704-2474, during the 2007-2008 and 2008-2009 fiscal years to replace the Department's current computer system, and these funds are appropriated to the Department for that purpose. For fiscal year 2007-2008, the Department shall not use more than fifteen million dollars ($15,000,000) from the Account to replace the Department's current computer system. For fiscal year 2008-2009, the Department shall not use more than twenty-five million dollars ($25,000,000) from the Account to replace the Department's current computer system.

"Funds appropriated under this subsection may be transferred to Budget Code 24708-2478 to be applied to expenditures for a replacement computer system. Funds appropriated under this subsection that are not transferred to Budget Code 24708-2478 remain in the Account until they are transferred to that Budget Code or withdrawn for expenditures for a replacement computer system. Funds appropriated under this subsection that are not expended at the end of the 2007-2009 biennium remain available for expenditure for the purpose designated in this subsection."

Session Laws 2007-323, s. 10.40D(a) and (b), as amended by Session Laws 2008-107, 10.9(a), provide:

"(a) The Department of Health and Human Services (Department) shall make full development of the replacement Medicaid Management Information System (MMIS) a top priority. During the development and implementation of MMIS, the Department shall develop plans to ensure the timely and effective implementation of enhancements to the system to provide the following capabilities:

"(1) Receiving and tracking premium or other payments required by law.

"(2) Compatibility with the administration of the Health Information System.

"The Department shall make every effort to expedite the implementation of the enhancements. ITS shall work in cooperation with the Department to ensure the timely and effective implementation of the MMIS and enhancements. The contract between the Department and the contract vendor shall contain an explicit provision requiring that the MMIS have the capability to fully implement the administration of NC Health Choice, NC Kids' Care, Ticket to Work, Families Pay Part of the Cost of Services under the CAP-MR/DD, CAP Children's Program, and all relevant Medicaid waivers and the Medicare 646 waiver as it applies to Medicaid eligibles. The Department must have detailed cost information for each requirement before signing the contract. Any contract between the Department and a vendor for the MMIS that does not contain the explicit provision required under this subsection is void on its face. Notwithstanding any other provision of law to the contrary, the Secretary of the Department of Health and Human Services does not have the authority to sign a contract for the MMIS if the contract does not contain the explicit provision required under this section.

"(b) Notwithstanding G.S. 114-2.3, the Department of Health and Human Services shall engage the services of private counsel with the pertinent information technology and computer law expertise to review requests for proposals and to negotiate and review contracts associated with MMIS. The counsel engaged by the Department shall review the MMIS contract between the Department of Health and Human Services and the vendor to ensure that the requirements of subsection (a) of this section are met in their entirety."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 3.

Division of Criminal Statistics.

§ 114-10. Division of Criminal Statistics.

Editor's Note. —

Session Laws 2008-107, s. 6.15 (a)-(f) provides: "(a) The General Assembly finds that the State's Uniform Crime Reporting technology is based on procedures developed in the 1930s and a design plan developed in the late 1980s. Based on recent unfortunate events, it is abundantly clear that the State must establish a framework for sharing critical information, and the framework must be implemented as soon as possible. With improved access to timely, complete, and accurate information, the members of the General Assembly, leadership in State and local law enforcement agencies, law enforcement officers, and everyone working in the criminal justice system can enhance their ability to make decisions on behalf of the people of the State, with fewer decisions based on instinct or guesswork.

"The General Assembly further finds that the April 2008 Beacon Report on a Strategic Plan for Data Integration recommends the development and implementation of a Crime Reporting Re-Design Project, a statewide crime analysis system designed to save time, save money, and save lives.

"(b) The Office of the State Controller, in cooperation with the State Chief Information Officer, and under the governance of the BEACON Project Steering Committee, shall by May 1, 2009, develop and implement a Criminal Justice Data Integration Pilot Program in Wake County in cooperation and communication with the advisory committee established pursuant to subsection (c) of this section and the leadership of State and local agencies. This pilot program shall integrate and provide up-to-date criminal information in a centralized location via a secure connection for use by State and local government. The pilot program vendor shall be selected by October 1, 2008.

"While it is the intent that this initiative provide a broad new access to information across State government, the plan shall comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal and State law shall be limited to authorized persons.

"(c) The Advisory Committee to the Criminal Justice Data Integration Pilot program is hereby established. The Advisory Committee shall consist of the following members:

"(1) The District Attorney for Prosecutorial District 10, who shall serve as chair.

"(2) The senior resident superior court judge for Superior Court Districts 10A through 10D.

"(3) A Wake County magistrate designated by the senior resident superior court judge.

"(4) The Clerk of Superior Court of Wake County.

"(5) The sheriff of Wake County.

"(6) The judicial district manager for District 10 of the Division of Community Corrections.

"(7) The chief court counselor for District Court District 10.

"(8) The president of Duke University and the chancellor of The University of North Carolina, or their designees.

"(d) The Advisory Committee, the Department of Justice, the Administrative Office of the Courts, the Department of Juvenile Justice and Delinquency Prevention, the Department of Correction, the Department of Crime Control and Public Safety, the Department of Transportation, and local law enforcement agencies shall fully cooperate with the Office of the State Controller and the State Chief Information Officer, under the guidance of the BEACON Steering Committee, to identify the informational needs, develop a plan of action, provide access to data, and implement secure integrated applications for information sharing of criminal justice and corrections data.

"(e) Of the funds appropriated in this act, the sum of five million dollars ($5,000,000) may be used to support the Criminal Justice Data Integration Pilot Program. Other funds available to BEACON may also be used for this purpose.

The Office of the State Controller, with the support of the Office of State Budget and Management, shall identify and make all efforts to secure any matching funds or other resources to assist in funding this initiative.

"(f) The Office of the State Controller, with the support of the Advisory Committee and the State Chief Information Officer, shall provide a written report of the plan's implementation progress to the House of Representatives and Senate Appropriations Committees, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division on a quarterly basis beginning October 1, 2008."

Session Laws 2008-107, s. 1.2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 4.

State Bureau of Investigation.

Part 1. General Powers and Duties of the State Bureau of Investigation.

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.

(a) The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as the Attorney General is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of the Director's assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any State-owned personal property, buildings, or other real property or any assault upon or threats against any legislative officer named in G.S. 147-2(1), (2), or (3), any executive officer named in G.S. 147-3(c), or any court officer as defined in G.S. 14-16.10(1). The Bureau also is authorized at the request of the Governor to conduct a background investigation on a person that the Governor plans to nominate for a position that must be confirmed by the General Assembly, the Senate, or the House of Representatives. The background investigation of the proposed nominee shall be limited to an investigation of the person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Chapter 138A of the General Statutes. The Governor must give the person being investigated written notice that the Governor intends to request a background investigation at least 10 days prior to the date that the Governor requests the State Bureau of Investigation to conduct the background investigation. The written notice shall be sent by regular mail, and there is created a rebuttable presumption that the person received the notice if the Governor has a copy of the notice.

(b) The State Bureau of Investigation is further authorized, upon request of the Governor or the Attorney General, to investigate the commission or attempted commission of the crimes defined in the following statutes:

(1) All sections of Article 4A of Chapter 14 of the General Statutes;
(2) G.S. 14-277.1;
(3) G.S. 14-277.2;
(4) G.S. 14-283;
(5) G.S. 14-284;
(6) G.S. 14-284.1;
(7) G.S. 14-288.2;
(8) G.S. 14-288.7;
(9) G.S. 14-288.8;
(10) G.S. 14-288.20;
(11) G.S. 14-284.2;
(12) G.S. 14-399(e);
(12a) G.S. 15A-287 and G.S. 15A-288;
(13) G.S. 130A-26.1;
(14) G.S. 143-215.6B;
(15) G.S. 143-215.88B; and
(16) G.S. 143-215.114B.

(b1) The State Bureau of Investigation is further authorized, upon request of the Governor or Attorney General, to investigate the solicitation, commission, or attempted commission, by means of a computer, computer network, computer system, electronic mail service provider, or the Internet, of the crimes defined in the following statutes:

(1) G.S. 14-190.6;
(2) G.S. 14-190.7;
(3) G.S. 14-190.8;
(4) G.S. 14-190.14;
(5) G.S. 14-190.15;
(6) G.S. 14-190.16;
(7) G.S. 14-190.17;
(8) G.S. 14-190.17A;
(9) G.S. 14-190.18;
(10) G.S. 14-190.19;
(11) G.S. 14-202.3;

Upon determining the location of the criminal violation, the State Bureau of Investigation shall promptly notify the sheriff and local law enforcement of its investigation.

(c) All records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the district attorney of any district if the same concerns persons or investigations in his district.

(d) In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund. (1937, c. 349, s. 6; 1947, c. 280; 1965, c. 772; 1973, c. 47, s. 2; 1981, c. 822, s. 2; 1987, c. 858, s. 1; c. 867, s. 3; 1991, c. 725, s. 2; 1993, c. 461, s. 2; 1995, c. 407, s. 2; 1999-398, s. 2; 2003-214, s. 1(1); 2005-121, s. 3; 2008-213, s. 88.)

Effect of Amendments. — Session Laws 2008-213, s. 88, effective August 15, 2008, in subsection (a), substituted "the Attorney General" for "he" in the second sentence, substituted "the Director's assistants" for "his assistants" in the fifth sentence, substituted "Chapter 138A of the General Statutes" for "Executive Order Number 1, filed on January 31, 1985, as continued on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985)" in the ninth sentence, and substituted "the Governor" for "he" twice in the tenth sentence.

Part 2. Criminal History Record Checks.

§ 114-19.11B. Criminal record checks of applicants for licensure as massage and bodywork therapists.

The Department of Justice may provide to the North Carolina Board of Massage and Bodywork Therapy from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure pursuant to Article 36 of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information. (2008-224, s. 20.)

Editor's Note. — Session Laws 2008-224, s. 21, made this section effective August 17, 2008, and applicable to the actions of therapists and schools on or after August 17, 2008, to massage and bodywork therapist applications for licensure, and to massage and bodywork therapy school applications for Board approval submitted to the Board on or after August 17, 2008.

§ 114-19.24. Criminal record checks of applicants and of current employees who are involved in the manufacture or production of drivers licenses and identification cards.

(a) The Department of Justice may, upon request, provide to the Department of Transportation, Division of Motor Vehicles, the criminal history from the State and National Repositories of Criminal Histories of the following individuals if the individual (i) is or will be involved in the manufacture or production of drivers licenses and identification cards, or (ii) has or will have the ability to affect the identity information that appears on drivers licenses or identification cards:

(1) An applicant for employment.
(2) A current employee.
(3) A contractual employee or applicant.
(4) An employee of a contractor.

(b) Along with the request, the Division of Motor Vehicles shall provide the following to the Department of Justice:

(1) The fingerprints of the person who is the subject of the record check.
(2) A form signed by the person who is the subject of the record check consenting to:
  a. The criminal record check.
  b. The use of fingerprints.
  c. Any other identifying information required by the State and National Repositories.
  d. Any additional information required by the Department of Justice.

(c) The fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(d) The Division of Motor Vehicles shall keep all information obtained pursuant to this section confidential.

(e) The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information. (2008-202, s. 1.)

Editor's Note. — Session Laws 2008-202, s. 4, made this section effective August 8, 2008.

§ 114-19.25. Criminal history record checks of applicants for licensure as nursing home administrators.

(a) The Department of Justice may provide to the North Carolina State Board of Examiners for Nursing Home Administrators from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure as a nursing home administrator under Article 20 of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal history record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

The Board shall keep all information obtained pursuant to this section confidential.

(b) The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information. (2008-183, s. 2.)

Editor's Note. — Session Laws 2008-183, s. 3, made this section effective December 1, 2008, and applicable to nursing home administrator applications and renewals submitted to the Board on or after that date.

Chapter 115B.

Tuition and Fee Waivers.

Sec.
115B-2.1. Fee waiver authorized.

§ 115B-1. Definitions.

Editor's Note. —
Session Laws 2008-135, s. 1, amended the Chapter 115B heading by inserting "and Fee."

§ 115B-2.1. Fee waiver authorized.

The constituent institutions of The University of North Carolina and the community colleges as defined in G.S. 115D-2(2) shall permit any person to attend classes for up to six hours of credit or noncredit purposes each academic semester without the required payment of fees, excluding textbooks, the community colleges computer use and technology fee, and community college course specific fees, if the person has attained the age of 65 and qualifies as a legal resident of North Carolina and as a resident for tuition purposes in accordance with definitions of residency that may from time to time be adopted by the Board of Governors and published in the residency manual of the Board of Governors. (2008-135, s. 2.)

Editor's Note. — Session Laws 2008-135, s. 2, enacted this section as G.S. 115B-2A. It was renumbered as G.S. 115B-2.1 at the direction of the Revisor of Statutes.

Session Laws 2008-135, s. 3, made this section effective August 1, 2008, and applicable to classes for any academic semester beginning on or after that date.

Chapter 115C.

Elementary and Secondary Education.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

Article 5.

Local Boards of Education.

Sec.
115C-47. Powers and duties generally.

SUBCHAPTER IV. EDUCATION PROGRAM.

Article 9.

Education of Children With Disabilities.

Part 1A. General Provisions.

115C-106.3. Definitions.

Part 1B. Provision of Free Appropriate Public Education.

115C-107.7. Discipline and homebound instruction.

Article 17.

Supporting Services.

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SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

Definitions and Preliminary Provisions.

§ 115C-1. General and uniform system of schools.

Small School System Supplemental Funding. — Session Laws 2008-107, s. 7.20, provides: "The State Board of Education shall modify its policy on the allotment of funds for small schools by:

"(1) Defining small schools to include schools of fewer than 110 students; and

"(2) Giving consideration to small, geographically isolated schools over other qualifying programs and schools."

Disadvantaged Student Supplemental Funding. — Session Laws 2007-323, s. 7.8(a)-(d), as amended by Session Laws 2008-107, s. 7.9, provides: "(a) Funds are appropriated in this act to address the capacity needs of local school administrative units to meet the needs of disadvantaged students. Each local school administrative unit shall use funds allocated to it for disadvantaged student supplemental funding to implement a plan jointly developed by the unit and the LEA Assistance Program team. The plan shall be based upon the needs of students in the unit not achieving grade-level proficiency. The plan shall detail how these funds shall be used in conjunction with all other supplemental funding allotments such as Low-Wealth, Small County, At-Risk Student Services/Alternative Schools, and Improving Student Accountability to provide instructional and other services that meet the educational needs of these students. Prior to the allotment of disadvantaged student supplemental funds, the plan shall be approved by the State Board of Education.

"Funds received for disadvantaged student supplemental funding shall be used, consistent with the policies and procedures adopted by the State Board of Education, only to:

"(1) Provide instructional positions or instructional support positions and/or professional development;

"(2) Provide intensive in-school and/or after-school remediation;

"(3) Purchase diagnostic software and progress-monitoring tools; and

"(4) Provide funds for teacher bonuses and supplements. The State Board of Education shall set a maximum percentage of the funds that may be used for this purpose.

"The State Board of Education may require districts receiving funding under the Disadvantaged Student Supplemental Fund to purchase the Education Value Added Assessment System in order to provide in-depth analysis of student performance and help identify strategies for improving student achievement. This data shall be used exclusively for instructional and curriculum decisions made in the best interest of children and for professional development for their teachers and administrators.

"(b) Funds are appropriated in this act to evaluate the Disadvantaged Student Supplemental Funding Initiatives and Low-Wealth Initiatives. The State Board of Education shall use these funds to:

"(1) Evaluate the strategies implemented by local school administrative units with Disadvantaged Student Supplemental Funds and Low-Wealth Funds and assess their impact on student performance; and

"(2) Evaluate the efficiency and effectiveness of the technical assistance and support provided to local school administrative units by the Department of Public Instruction.

"The State Board of Education shall report the results of the evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by January 15 of each year.

"(c) Funds appropriated to a local school administrative unit for disadvantaged student supplemental funding shall be allotted based on: (i) the local school administrative unit's eligible DSSF population and (ii) the difference between a teacher-to-student ratio of 1:21 and the following teacher-to-student ratios:

"(1) For counties with wealth greater than ninety percent (90%) of the statewide average, a ratio of 19.9;

"(2) For counties with wealth not less than eighty percent (80%) and not greater than ninety percent (90%) of the statewide average, a ratio of 1:19.4;

"(3) For counties with wealth less than eighty percent (80%) of the statewide average, a ratio of 1:19.1; and

"(4) For LEAs receiving DSSF funds in 2005-2006, a ratio of 1:16. These LEAs shall receive no less than the DSSF amount allotted in 2006-2007.

"For the purpose of this subsection, wealth shall be calculated under the low-wealth supplemental formula.

"(d) If a local school administrative unit's wealth increases to a level that adversely affects the unit's DSSF allotment ratio, the DSSF allotment for that unit shall be maintained at the prior year level for one additional fiscal year."

Funds to Implement the ABCs of Public Education. — Session Laws 2008-107, s. 7.3, provides: "(a) The State Board of Education shall use funds appropriated in this act for State Aid to Local School Administrative Units to provide incentive funding for schools that met or exceeded the projected levels of improvement in student performance during the 2007-2008 school year, in accordance with the ABCs of Public Education Program. In accordance with State Board of Education policy:

"(1) Incentive awards in schools that achieve higher than expected improvements may be:

"a. Up to one thousand five hundred dollars ($1,500) for each teacher and for certified personnel; and

"b. Up to five hundred dollars ($500.00) for each teacher assistant.

"(2) Incentive awards in schools that meet the expected improvements may be:

"a. Up to seven hundred fifty dollars ($750.00) for each teacher and for certified personnel; and

"b. Up to three hundred seventy-five dollars ($375.00) for each teacher assistant.

"The State Board of Education shall limit the amount expended for this program to the average expenditure for this program over the last 11 years, which is ninety-four million three hundred twenty-five thousand six hundred twelve dollars ($94,325,612).

"(b) The State Board of Education may use funds appropriated to the State Public School Fund to implement the consolidated assistance program, as directed in Section 7.6(b) of S.L. 2006-66. The Board shall report to the Joint Legislative Education Oversight Committee by January 15, 2009, on any restructuring of the program pursuant to this section." For prior similar provisions, see Session Laws 2007-323. s. 7.18.

NC Virtual Public School Program. — Session Laws 2007-323, s. 7.20(a)-(f), as amended by Session Laws 2008-107, s. 7.4(a), provides: "(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

"(b) The Director of NCVPS shall continue to ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the North Carolina Virtual Public School program, eliminating course duplication.

"(c) Subsequent to course consolidation, the Director shall prioritize e-learning course offerings for students residing in rural and low-wealth county LEAs, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

"(d) The State Board of Education shall implement an allotment formula developed pursuant to Section 7.16(d) of S.L. 2006-66, for funding e-learning, effective in the 2009-2010 fiscal year. NCVPS shall be available at no cost to all students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs. The Department of Public Instruction shall communicate to local school administrative units all applicable guidelines regarding the enrollment of nonpublic school students in these courses.

"The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2008, on its implementation of this section.

"Funds appropriated for NCVPS shall not revert at the end of the 2007-2008 fiscal year but shall remain available for expenditure in the 2008-2009 fiscal year.

"(f) The State Board of Education may convert the 22 three-month positions that were authorized for NCVPS in S.L. 2006-66 to five full-time positions if the Board determines that it is appropriate to do so."

Study of Public School Funding Formulas. — Session Laws 2008-181, ss. 37.1 through 37.3, provides: "37.1. The Joint Legislative Study Committee on Public School Funding Formulas may review the implementation of any modifications to school funding formulas that are enacted by the General Assembly upon the recommendation of the Committee and shall evaluate the impact of those modifications.

"37.2. The Committee may report to the General Assembly at least once a year on its activities.

"37.3. The Committee shall terminate upon completion of its evaluation of modifications to public school funding formulas."

Dropout Prevention Grants. — Session Laws 2007-323, s. 7.32(a)-(f), as amended by Session Laws 2008-107, ss. 7.14(a) and 7.14A, and as amended by Session Laws 2008-181, s. 35.1, provides: "(a) Findings. — The General Assembly finds that:

"(1) North Carolina's schools recorded 22,180 dropout events in grades 9-12 for 2005-2006, a nine and nine-tenths percent (9.9%) increase from the count reported in 2004-2005. It is the highest count of dropouts since 1999-2000.

"(2) A disproportionate share of the increase in dropout rates occurred in large local school administrative units.

"(3) Black males accounted for a disproportionate amount of the increase in dropout count, and the dropout rate for black males increased to seven and one-hundredths percent (7.01%), an eight and four-tenths percent (8.4%) increase over the 2004-2005 rate.

"(4) Students drop out of school for a variety of reasons, including academic issues, family and other personal reasons, discipline issues, drug abuse, the need to work, school size, and school climate.

"(5) Students who drop out of school without graduating are more likely to be unemployed, receive public assistance, and have a higher incarceration rate than those who graduate.

"(6) In order for our citizens and State to thrive in a global, knowledge-based economy, it is imperative that more of our students graduate from high school with the knowledge and skills needed for postsecondary education or high-skilled employment.

"(7) Differing local needs and local resources necessitate the development of locally generated programs and initiatives that target dropouts and high school retention.

"(b) Purpose. — Recognizing that having an unacceptable dropout rate is not a new development in North Carolina, or in the rest of the country, and that over the years there have been, and continue to be, many programs and initiatives that have strived to address this issue, the purpose of this section is to focus attention and resources on innovative programs and initiatives that succeed in keeping students in school when other conflicting factors are pushing them to drop out before they are prepared to further their postsecondary education or enter the workforce.

"(c) Committee. — There is established the Committee on Dropout Prevention. The Committee shall be located administratively in the Department of Public Instruction but shall exercise its powers and duties independently of the Department of Public Instruction. The Department of Public Instruction shall provide for the administrative costs of the Committee and shall provide staff to the Committee.

"The Committee shall determine which local school administrative units, schools, agencies, and nonprofits shall receive dropout prevention grants under subsection (d) of this section, the amount of each grant, and eligible uses of the grant funding. The Committee shall consist of the following 15 members:

"(1) The Governor shall appoint five members, of whom one is a superintendent of schools, one is a representative of a nonprofit, and one is a school social worker;

"(2) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint five members, of whom one is a principal, one is a representative of a school of education, and one is a school counselor; and

"(3) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint five members, of whom one is a teacher, one is a member of the business community, and one is a representative of the juvenile justice system.

"The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The members of the Committee shall assure they are in compliance with laws and rules governing conflicts of interest.

"(d) Dropout Prevention Grants. — The following criteria apply to dropout prevention grants approved by the Committee established under subsection (c) of this section.

"(1) Grants shall be issued in varying amounts up to a maximum of one hundred fifty thousand dollars ($150,000).

"(2) These grants shall be provided to innovative programs and initiatives that target students at risk of dropping out of school and that demonstrate the potential to (i) be developed into effective, sustainable, and coordinated dropout prevention and reentry programs in middle schools and high schools and (ii) serve as effective models for other programs.

"(3) Priority shall be given to new programs and initiatives or to those that have begun within the last five school years.

"(4) Grants shall be distributed geographically throughout the State.

"(5) Grants may be made to local school administrative units, schools, local agencies, or nonprofit organizations.

"(6) Grants shall be to programs and initiatives that hold all students to high academic and personal standards.

"(7) Grant applications shall state (i) how grant funds will be used, (ii) what, if any, other resources will be used in conjunction with the grant funds, (iii) how the program or initiative will be coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community, and (iv) a process for evaluating the success of the program or initiative.

"(8) Programs and initiatives that receive grants under this subsection shall be based on best practices for preventing students from dropping out of school or for increasing the high school completion rate for those students who already have dropped out of school.

"(9) Priority for grants shall be given to proposals that demonstrate input from the local community and coordination with other available programs or resources.

"(10) Grantees shall assure their compliance with applicable laws and rules regulating conflicts of interest.

"(12) Grants shall be made no later than November 1, 2007.

"(e) Report. — The Committee shall report to the Joint Legislative Commission on Dropout Prevention and High School Graduation created in subsection (f) of this section by December 1, 2007, on the grants awarded under subsection (d) of this section. The Committee shall terminate on December 31, 2010

"(f) Joint Legislative Commission on Dropout Prevention and High School Graduation. —

"(1) There is created the Joint Legislative Commission on Dropout Prevention and High School Graduation (Commission) to be composed of 16 members, eight appointed by the President Pro Tempore of the Senate and eight appointed by the Speaker of the House of Representatives. The President Pro Tempore and the Speaker shall each designate a cochair from their appointees. Vacancies shall be filled in the same manner as the original appointments were made.

"(2) The cochairs shall jointly call the first meeting of the Commission. A quorum of the Commission is a majority of its members.

"(3) The Commission shall:

"a. Evaluate initiatives and programs designed to reduce the dropout rate and increase the number of students who graduate from high school prepared to further their postsecondary education or enter the workforce.

"b. Review the research on factors related to students' success in school.

"c. Evaluate the grants awarded under subsection (d) of this section and recommend whether any of the programs and initiatives that received one of these grants has potential for success and should be expanded or replicated.

"d. Study the emergence of major middle school and high school reform efforts, including Learn and Earn Programs, the New Schools Initiative, and 21st Century Schools, and the impact they may have on the dropout rate.

"e. Examine strategies, programs, and support services that should be provided if the compulsory school attendance age is raised to enable students to graduate from high school and time lines for implementing those strategies, programs, and support services.

"f. Following a review of the courses required for graduation and the current system of awarding credit for those courses, determine whether changes should be made that better recognize the different learning rates and other needs of students.

"g. Determine which interventions and other strategies, such as accelerated learning, tutoring, mentoring, or small class sizes, when employed as a substitute to grade retention or as a subsequent measure to grade retention, are the most effective at enabling these students to remain in school and graduate.

"h. Study any other issue that the Commission considers relevant and appropriate.

"(4) The Legislative Services Commission, through the Legislative Services Officer, shall assign professional and clerical staff to assist in the work of the Joint Legislative Commission on Dropout Prevention and High School Graduation. The expenses of employment of the clerical staff shall be borne by the Joint Legislative Commission on Dropout Prevention and High School Graduation.

"(5) The Commission may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission, through the Legislative Services Officer, shall grant to the Joint Legislative Commission on Dropout Prevention and High School Graduation adequate meeting space in the State Legislative Building or the Legislative Office Building.

"(6) Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

"a. Members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;

"b. Members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6; and

"c. All other members, at the rate established in G.S. 138-5.

"(7) The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"(8) The Commission shall submit an interim written report of its findings and recommendations on or before the convening of the 2009 Session of the General Assembly. The Commission may submit an interim report, including any recommendations and proposed legislation, to the Joint Legislative Education Oversight Committee and the General Assembly by May 1, 2010, and shall submit a final written report of its findings and recommendations on or before the convening of the 2011 Session of the General Assembly. All reports shall be filed with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate."

Session Laws 2008-107, s. 7.14(b), provides: "Committee. — The Committee on Dropout Prevention, as created in Section 7.32 of S.L. 2007-323, is reestablished to determine which local school administrative units, schools, agencies, and nonprofits shall receive dropout prevention grants under this section, the amount of each grant, and eligible uses of the grant funding. When utilizing outside grant reviewers and raters, the Committee is encouraged to utilize individuals who represent public schools, universities, and community-based organizations.

"The Committee shall continue to be located administratively in the Department of Public Instruction but shall exercise its powers and duties independently of the Department of Public Instruction. The Department of Public Instruction shall provide for the administrative costs of the Committee. The Department of Public Instruction shall contract with an independent consultant to serve as staff to the Committee, to provide technical assistance to the grant recipients for the length of the grant, and to assist the Committee in evaluating the impact of the grants awarded.

"The members of the Committee shall assure they are in compliance with laws and rules governing conflicts of interest. The Committee shall meet on the call of the cochairs provided that the Committee shall meet at least once every three months.

"In the event of a vacancy on the Committee, the appointing authorities are encouraged to provide representation on the Committee from each of the eight educational districts as defined in G.S. 115C-65."

Session Laws 2008-107, s. 7.14(c)-(e), provided selection criteria for Dropout Prevention Grant recipients, provided criteria for Dropout Prevention Grants, and provided for the evaluation and reporting of the impact Dropout Prevention Grants awarded under Session Laws 2007-323 and 2008-107 have on dropout prevention.

Session Laws 2008-107, s. 7.14(f), provides: "Dropout Prevention Network. — In addition to its other duties, the Joint Legislative Commission on Dropout Prevention and High School Graduation, established under Section 7.32 of S.L. 2007-323, shall study the development of an effective network for the purpose of sharing best practices among the grant recipients, the public schools, and other interested organizations. The Commission shall consider interactive Web sites, electronic information sharing, professional development opportunities, conferences, and other means that it believes would be effective. The Commission may consult with the Department of Public Instruction and the Committee on Dropout Prevention. The Commission shall report its findings and any recommendations to the 2009 General Assembly."

Session Laws 2008-107, s. 7.14(g), as amended by 2008-118, s. 1.3(b), and s. 7.14(i) and (j), provide for specific appropriations for the Committee on Dropout Prevention. Session Laws 2008-107, s. 7.14(h), effective June 30, 2008, makes the appropriations non-reverting.

Task Force on Preventing Childhood Obesity. — Session Laws 2008-107, s. 10.17(cc), as amended by Session Laws 2008-118, s. 1.5(b), provides: "The sum of one hundred thousand dollars ($100,000) appropriated in this section in the Maternal and Child Health Block Grant to the Department of Health and Humans Services, Division of Public Health, for the 2008-2009 fiscal year shall be used to establish a Task Force on Preventing Childhood Obesity (Task Force) to be cochaired by the State Health Director and the Chairman of the State Board of Education. The Task Force is to review current State activities in the Department of Health and Human Services, the Department of Public Instruction, and the Health and Wellness Trust Fund and develop a comprehensive statewide strategic plan with recommendations for preventing childhood obesity. The goals of the strategic plan shall encompass the following framework of initiatives:

"(1) Providing healthier foods to students;

"(2) Improving the availability of healthy foods at home and in the community;

"(3) Increasing the frequency, intensity, and duration of physical activity in schools;

"(4) Encouraging communities to establish a master plan for pedestrian and bicycle pathways;

"(5) Improving access to safe places where children can play; and

"(6) Developing activities or programs that limit children's screen time, including limits on video games and television.

"Membership on the task force shall include, but is not limited to, representatives from the following organizations:

"(1) Health and Wellness Trust Fund.

"(2) North Carolina Institute for Public Health.

"(3) UNC Active Living by Design.

"(4) Blue Cross Blue Shield of North Carolina.

"(5) NC Hospital Association.

"(6) NC Parent Teacher Association.

"(7) American Heart Association.

"(8) School Nutrition Association of North Carolina.

"(9) Association of Local Health Directors.

"The Chairman of the State Board of Education and the State Health Director shall report to the House of Representatives Chairs of the Appropriations Subcommittees on Health and Human Services and Education, the Senate Chairs of the Appropriations Committees on Health and Human Services and Education/ Public Instruction, the Joint Legislative Oversight Committee on Education, the Joint Legislative Oversight Committee on Health, and the Fiscal Research Division on the Task Force on Preventing Childhood Obesity's strategic plan and recommendations by January 15, 2009, or upon the convening of the 2009 Session of the General Assembly, whichever occurs first.

Citizens Schools Program Pilot. — Session Laws 2008-107, s. 10.17(p), provides: "The sum of six hundred thousand dollars ($600,000) appropriated under this section in the TANF block grant to the Department of Health and Human Services, Division of Social Services, for the 2008-2009 fiscal year shall be used to implement a Citizens Schools Program, a three-year urban/rural dropout prevention pilot program in the Durham and Vance county public school systems. The Citizens Schools Program provides high-quality, extended learning time for middle school students in schools with high percentages of minority students, poor students, or both, and students with other risk factors for dropping out and reduces the rate of teen pregnancy. Students in the Citizens Schools Program receive after-school instruction in groups of eight to 12 students per adult. The instruction includes: (i) 60 minutes of daily academic support with strong study skills and critical thinking components, (ii) four 11-week apprenticeships, using volunteers as leaders focusing on 21stcentury skills, and (iii) career exploration and choice time to further explore a variety of interests. Citizens Schools Team Leaders contact each student's family by telephone at least every two weeks to discuss the student's participation and progress.

"North Carolina State University shall evaluate the program to ensure that the program is effectively helping students stay in school and successfully graduate in their four-year cohort. The evaluation shall include a long-term study of the graduation cohort rate increase as well as short-term measures, including attendance, grade point average, discipline, the program dropout rate, credits earned, and postsecondary education matriculation. Not later than January 1, 2009, North Carolina State University shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the results of its evaluation."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

CASE NOTES

Minimum Quantum of Educational Instruction Required. — G.S. 115C-1, consistent with the purpose of the constitutional provision it was designed to implement, does not mandate equal access to a school term of nine consecutive months, but rather refers to the minimum quantum of educational instruction required. How that minimum quantum of instruction is translated into an annual school calendar is then prescribed by G.S. 115C-84.2, which sets out certain requirements, but otherwise mandates that the local board shall designate when the 180 instructional days shall occur and specifically recognizes year-round schools as a permissible calendaring scheme. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

ARTICLE 2.

State Board of Education.

§ 115C-12. Powers and duties of the Board generally.

NC Virtual Public School Program. — Session Laws 2007-323, s. 7.20(a)-(f), as amended by Session Laws 2008-107, s. 7.4(a), provides: "(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

"(b) The Director of NCVPS shall continue to ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the North Carolina Virtual Public School program, eliminating course duplication.

"(c) Subsequent to course consolidation, the Director shall prioritize e-learning course offerings for students residing in rural and low-wealth county LEAs, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

"(d) The State Board of Education shall implement an allotment formula developed pursuant to Section 7.16(d) of S.L. 2006-66, for funding e-learning, effective in the 2009-2010 fiscal year. NCVPS shall be available at no cost to all students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs. The Department of Public Instruction shall communicate to local school administrative units all applicable guidelines regarding the enrollment of nonpublic school students in these courses.

"The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2008, on its implementation of this section.

"Funds appropriated for NCVPS shall not revert at the end of the 2007-2008 fiscal year but shall remain available for expenditure in the 2008-2009 fiscal year.

"(f) The State Board of Education may convert the 22 three-month positions that were authorized for NCVPS in S.L. 2006-66 to five full-time positions if the Board determines that it is appropriate to do so."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

CASE NOTES

Construction with Constitutional Mandates. — G.S. 115C-12, especially as a codification of the N.C. Const., Art. IX, § 5, can be read as setting a floor for the quantum of education required. Any other construction of the statute would place G.S. 115C-12 in conflict with G.S. 115C-84.2(a)(1)'s requirement that a school calendar include a minimum of 180 days and 1,000 hours of instruction covering at least 9 calendar months. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

ARTICLE 3.

Department of Public Instruction.

§ 115C-18. Election of Superintendent of Public Instruction.

Editor's Note. — Session Laws 2007-323, s. 7.29(a), as amended by Session Laws 2008-194, s. 9, which expires on June 30, 2009, provides: "(a) Notwithstanding G.S. 143C-6-4, the Department of Public Instruction may reorganize in accordance with the plan adopted by the State Board of Education. The Department shall report to the Joint Legislative Commission on Governmental Operations on the reorganization."

§ 115C-21. Powers and duties generally.

More at Four Program and Office of School Readiness. — Session Laws 2007-323, s. 7.24(a)-(f), as amended by Session Laws 2008-107, s. 7.17(c), and as amended by Session Laws 2008-181, s. 49.1, provides: "(a) The Department of Public Instruction shall continue the implementation of the 'More at Four' prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

"(1) A process and system for identifying children at risk of academic failure.

"(2) A process and system for identifying children who are not being served in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs, and who are eligible to enter kindergarten the next school year, as well as children who are underserved.

"(3) A curriculum or several curricula that are research-based and/or built on sound instructional theory. These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.

"(4) An emphasis on ongoing family involvement with the prekindergarten program.

"(5) Evaluation of child progress through a statewide evaluation, as well as ongoing assessment of the children by teachers.

"(6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.

"(7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.

"(8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services and the Department of Public Instruction. The Department may use the child care rating system to assist in determining program participation.

"(9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.

"(10) A local contribution. Programs must demonstrate that they are accessing resources other than 'More at Four.'

"(11) A system of accountability to include a yearly review. The Department shall contract with an independent research organization to produce an annual report to include longitudinal review of the program and academic, behavioral, and other child specific outcomes. The review shall also include a test of the feasibility of conducting a quasi experimental research design with a representative sample or samples of children who complete the More at Four program every year and children of comparable demographics and grade levels that do not participate in a More at Four program. The review shall be presented to the Joint Legislative Oversight Committee on Education by January 31 of every year.

"(12) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services and the Department of Public Instruction shall consider the reallocation of existing funds from State and local programs that provide prekindergarten-related care and services.

"(b) The Department of Public Instruction shall implement a plan to expand 'More at Four' program standards within existing resources to include four- and five-star-rated centers and schools serving four-year-olds and develop guidelines for these programs. The 'NC Prekindergarten Program Standards' initiative shall recognize four- and five-star-rated centers that choose to apply and meet equivalent 'More at Four' program standards as high quality pre-k classrooms. Classrooms meeting these standards shall have access to training and workshops for 'More at Four' programs. Whenever expansion slots are available, these classrooms shall have first priority to receive them.

"The 'More at Four' program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through January 31 of each year, at which time any remaining funds for slots unfilled shall be used to meet the needs of the waiting list for subsidized child care.

"(c) The Department of Public Instruction shall submit a report by February 1, 2008, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Education, the House of Representatives Appropriations Subcommittee on Education, and the Fiscal Research Division. This final report shall include the following:

"(1) The number of children participating in the program.

"(2) The number of children participating in the program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.

"(3) The expected expenditures for the programs and the source of the local match for each grantee.

"(4) The location of program sites and the corresponding number of children participating in the program at each site.

"(5) A comprehensive cost analysis of the program, including the cost per child served by the program.

"(6) The status of the NC Prekindergarten initiatives as outlined in this section.

"(d) For the 2007-2008 and the 2008-2009 fiscal years, the 'More at Four' program shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors. Furthermore, any age-eligible child of (i) an active duty member of the armed forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the armed forces, who is ordered to active duty by the proper authority within the last 18 months or expected to be ordered within the next 18 months, or (ii) a member of the armed forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the armed forces, who was injured or killed while serving on active duty, shall be eligible for the program.

"(e) The 'More at Four' program funding shall not supplant any funding for classrooms serving four-year-olds as of the 2005-2006 fiscal year. Support of existing four-year-old classrooms with 'More at Four' program funding shall be permitted when current funding is eliminated, reduced, or redirected as required to meet other specified federal or State educational mandates.

"(f) If a county is unable to increase 'More at Four' slots because of a documented lack of available resources necessary to provide the required local contribution for the additional slots allocated to the county for the 2007-2008 fiscal year, the contract agency for that county may appeal to the Office of School Readiness for an exception to the required local amount for those additional slots. The Office of School Readiness may grant an exception and allot funds to pay up to ninety percent (90%) of the full cost of the additional slots for that county if it finds that (i) there is in fact a documented lack of available resources in the county and (ii) granting the exception will not reduce access statewide to 'More at Four' slots."

Editor's Note. — Session Laws 2007-323, s. 7.29(a), as amended by Session Laws 2008-194, s. 9, which expires on June 30, 2009, provides: "(a) Notwithstanding G.S. 143C-6-4, the Department of Public Instruction may reorganize in accordance with the plan adopted by the State Board of Education. The Department shall report to the Joint Legislative Commission on Governmental Operations on the reorganization."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 5.

Local Boards of Education.

§ 115C-36. Designation of board.

CASE NOTES

Applied in Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

§ 115C-40. Board a body corporate.

CASE NOTES

Applied in Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

§ 115C-45. Judicial functions of board.

CASE NOTES

Exhaustion of Administrative Remedies. —

Trial court lacked subject matter jurisdiction over a mother's lawsuit against a superintendent, in the superintendent's official capacity, and the Board, in which the mother sought to challenge the decision to revoke the discretionary admission of the mother's two minor children to a particular high school. Although G.S. 115C-45(c) provided for administrative review of that decision, the Board had not issued a final administrative decision in the matter by the time the mother filed her lawsuit in the trial court and, thus, the mother had not exhausted the available administrative remedies. Hentz v. Asheville City Bd. of Educ., — N.C. App. —, 658 S.E.2d 520, 2008 N.C. App. LEXIS 604 (Apr. 1, 2008).

§ 115C-47. Powers and duties generally.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

(1) To Provide an Adequate School System. — It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units, as directed by law.

(2) To Exercise Certain Judicial Functions and to Participate in Certain Suits and Actions. — Local boards of education shall have the power and authority to exercise certain judicial functions pursuant to the provisions of G.S. 115C-45 and to participate in certain suits and actions pursuant to the provisions of G.S. 115C-44.

(3) To Divide Local School Administrative Units into Attendance Areas. — Local boards of education shall have authority to divide their various units into attendance areas without regard to district lines.

(4) To Regulate Extracurricular Activities. — Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.

(5) To Fix Time of Opening and Closing Schools. — The time of opening and closing the public schools shall be fixed under G.S. 115C-84.2.

(6) To Regulate Fees, Charges and Solicitations. — Local boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund-raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this subdivision shall not apply to such textbooks fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by local boards of education shall be reported to the Superintendent of Public Instruction.

(7) To Accept and Administer Federal or Private Funds. — Local boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, local boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other local boards of education. Local boards of education shall furnish such information as

shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this subdivision.

(8) To Sponsor or Conduct Educational Research. — Local boards of education are authorized to sponsor or conduct educational research and special projects approved by the Department of Public Instruction and the State Board of Education that may improve the school system under their jurisdictions. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes.

(9) To Assure Accurate Attendance Records. — When the governing board of any local school administrative unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.

(10) To Assure Appropriate Class Size. — It shall be the responsibility of local boards of education to assure that the class size and teaching load requirements set forth in G.S. 115C-301 are met. Any teacher who believes that the requirements of G.S. 115C-301 have not been met shall make a report to the principal and superintendent, and the superintendent shall immediately determine whether the requirements have in fact not been met. If the superintendent determines the requirements have not been met, he shall make a report to the next local board of education meeting. The local board of education shall take action to meet the requirements of the statute. If the local board cannot organizationally correct the exception and if any of the conditions set out in G.S. 115C-301(g)(1) exist, it shall immediately apply to the State Board of Education for additional personnel or a waiver of the class size requirements, as provided in G.S. 115C-301(g).

Upon notification from the State Board of Education that the reported exception does not qualify for an allotment adjustment or a waiver under provisions of G.S. 115C-301, the local board, within 30 days, shall take action necessary to correct the exception.

At the end of the second month of each school year, the local board of education, through the superintendent, shall file a report with the State Board of Education, in a format prescribed by the State Board of Education, describing the organization of each school, the duties of each teacher, the size of each class, and the teaching load of each teacher. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that exist at that time.

In addition to assuring that the requirements of G.S. 115C-301 are met, each local board of education shall also have the duty to provide an adequate number of classrooms to meet the requirements of that statute.

(11) To Determine the School Calendar. — Local boards of education shall determine the school calendar under G.S. 115C-84.2.

(12) **(For final effective date, see notes)** To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the standard course of study.

(12) **(For future effective date, see notes)** To Implement the Basic Education Program. — Local boards of education shall implement the

Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the Basic Education Program.

(13) To Elect a Superintendent. — The local boards of education shall elect superintendents subject to the requirements and limitations set forth in G.S. 115C-271.

(14) To Supply an Office, Equipment and Clerical Assistance for the Superintendent. — It shall be the duty of the various boards of education to provide the superintendent of schools with an office, equipment and clerical assistance as provided in G.S. 115C-277.

(15) To Prescribe Duties of Superintendent. — The local boards of education shall prescribe the duties of the superintendent as subject to the provisions of G.S. 115C-276(a).

(16) To Remove a Superintendent, When Necessary. — Local boards of education shall remove a superintendent for cause, pursuant to the provisions of G.S. 115C-274(a).

(17) To Employ Assistant Superintendent and Supervisors. — Local boards of education have the authority to employ assistant superintendents and supervisors pursuant to the provisions of G.S. 115C-278 and 115C-284(g).

(18) To Make Rules Concerning the Conduct and Duties of Personnel. — Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.

Prior to the beginning of each school year, each local board of education shall identify all reports, including local school required reports, that are required at the local level for the school year and shall, to the maximum extent possible, eliminate any duplicate or obsolete reporting requirements. No additional reports shall be required at the local level after the beginning of the school year without the prior approval of the local board of education.

Each local board of education shall appoint a person or establish a paperwork control committee to monitor all reports and other paperwork required of teachers by the central office.

(18a) To Adopt Rules and Policies Limiting the Noninstructional Duties of Teachers. — Local boards of education shall adopt rules and policies limiting the noninstructional duties assigned to teachers. A local board may temporarily suspend the rules and policies for individual schools upon a finding that there is a compelling reason the rules or policies should not be implemented. These rules and policies shall ensure that:

a. Teachers with initial certification are not assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties assigned to these teachers are minimized, so these teachers have an opportunity to develop into skilled professionals;

b. Teachers with 27 or more years of experience are not assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties assigned to these teachers are minimized, so these teachers have an opportunity to informally share their experience and expertise with their colleagues;

c. The noninstructional duties of all teachers are limited to the extent possible given federal, State, and local laws, rules, and policies, and that the noninstructional duties required of teachers are distributed equitably among employees.

(19) To Approve the Assignment of Duties to an Assistant Principal. — Local boards of education shall permit certain duties of the principal to be assigned to an assistant or acting principal pursuant to the provisions of G.S. 115C-289.

(20) To Provide for Training of Teachers. — Local boards of education are authorized to provide for the training of teachers as provided in G.S. 115C-300.

(21) It is the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds.

The local board shall determine salary schedules of employees pursuant to the provisions of G.S. 115C-273, 115C-285(b), 115C-302.1(i), and 115C-316(b).

The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms approved by the State Board of Education and containing all information required by the State Board of Education. This monthly payroll shall be signed by the principal of each school.

(22) To Provide School Food Services. — Local boards of education shall provide, to the extent practicable, school food services as provided in Part 2 of Article 17 of this Chapter.

(23) To Purchase Equipment and Supplies. — Local boards shall contract for equipment and supplies under G.S. 115C-522(a) and G.S. 115C-528.

(24) Purchase of Activity Buses with Local Capital Outlay Tax Funds. — Local boards of education are authorized to purchase activity buses with local capital outlay tax funds, and are authorized to maintain these buses in the county school bus garage. Reimbursement to the State Public School Fund shall be made for all maintenance cost including labor, gasoline and oil, repair parts, tires and tubes, antifreeze, etc. Labor cost reimbursements and local funds may be used to employ additional mechanics so as to insure that all activity buses owned and operated by local boards of education are maintained in a safe mechanical condition. Replacement units for activity buses shall be financed with local funds.

(25) To Secure Liability Insurance. — Local boards of education are authorized to secure liability insurance, as provided in G.S. 115C-42, so as to waive their immunity for liability for certain negligent acts of their employees.

(25a) To Reimburse the Additional Cost of Automobile Liability Coverage for School Social Workers Required to Transport Students. — Unless a local board of education otherwise provides for liability insurance coverage of a school social worker who is required to transport students under G.S. 115C-317.1, a local board of education may require a school social worker who is required to transport students as provided under G.S. 115C-317.1 to increase the liability limits or add a business-use rider, or both, on that employee's personal automobile liability insurance policy for the purpose of transporting students within the course of that employee's work duties, only if the board reimburses the employee for the additional premium charged, up to the maximum additional amount charged to a person with up to two points assessed under the Safe Driver Incentive Plan pursuant to G.S. 58-36-65, for the increased liability limits or the added rider, or both.

(26) If a local board of education provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the local board of education shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.

(27) Repealed by Session Laws 1987, c. 571, s. 2.

(28) To Enter Lease Purchase and Installment Purchase Contracts. — Local boards may enter into lease purchase and installment purchase contracts as provided in G.S. 115C-528.

(28a) To Enter Guaranteed Energy Savings Contracts for Energy Conservation Measures. — Local boards may purchase energy conservation measures by guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(29) To Authorize the Observance of a Moment of Silence. — To afford students and teachers a moment of quiet reflection at the beginning of each day in the public schools, to create a boundary between school time and nonschool time, and to set a tone of decorum in the classroom that will be conducive to discipline and learning, each local board of education may adopt a policy to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources.

(29a) To Require the Display of the United States and North Carolina Flags, and to Require the Recitation of the Pledge of Allegiance. — Local boards of education shall adopt policies to (i) require the display of the United States and North Carolina flags in each classroom, when available, (ii) require that recitation of the Pledge of Allegiance be scheduled on a daily basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom.

(29b) To Ensure Freedom of Religion. — No local board of education shall have a policy of denying, or that effectively prevents participation in, prayer in public schools by individuals on a voluntary basis, except when necessary to maintain order and discipline. No local board of education shall encourage or require any person to participate in prayer or influence the form or content of any prayer in public schools. This subdivision shall not be construed to direct any local board of education to take any action in violation of the Constitutions of North Carolina or the United States.

(30) To Appoint Advisory Councils. — Local boards of education are authorized to appoint advisory councils as provided in G.S. 115C-55.

(31) Local boards of education shall determine the hours of employment for teacher assistants. The Legislative Commission of Salary Schedules for Public School Employees shall include in its report to the General Assembly recommendations regarding hours of employment for teacher assistants and other employees.

(32) To Refer All Students Who Drop Out of the Public Schools to Appropriate Services. — Local boards of education shall refer all students who drop out of the public schools to appropriate services. When appropriate public school services such as extended day programs are available, the local boards shall refer the students to those services. When appropriate public school programs are not available or are not suitable for certain students, the local board shall refer the students to the community college system or to other appropriate services.

(32a) To Establish Alternative Learning Programs and Develop Policies and Guidelines. — Each local board of education shall establish at least one alternative learning program and shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services to be provided, (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision, and (iii) strategies for providing alternative learning programs, when feasible and appropriate, for students who are subject to long term suspension or expulsion. In developing these guidelines, local boards shall consider the State Board's standards developed under G.S. 115C-12(24). Upon adoption of policies and guidelines under this subdivision, local boards are encouraged to incorporate them in their safe school plans developed under G.S. 115C-105.47.

The General Assembly urges local boards to adopt policies that prohibit superintendents from assigning to any alternative learning program any professional public school employee who has received within the last three years a rating on a formal evaluation that is less than above standard.

Notwithstanding this subdivision, each local board shall adopt policies based on the State Board's standards developed under G.S. 115C-12(24). These policies shall apply to any new alternative learning program or alternative school that is implemented beginning with the 2006-2007 school year. Local boards of education are encouraged to apply these standards to alternative learning programs and alternative schools implemented before the 2006-2007 school year.

Local boards shall assess on a regular basis whether the unit's alternative schools and alternative learning programs comply with the State Board's standards developed under G.S. 115C-12(24) and whether they incorporate best practices for improving student academic performance and reducing disruptive behavior, are staffed with professional public school employees who are well trained and provided with appropriate staff development, are organized to provide coordinated services, and provide students with high quality and rigorous academic instruction.

(33) Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, pursuant to the provisions of G.S. 115C-98(b).

(33a) To Approve and Use Textbooks Not Adopted by State Board of Education. — Local boards of education shall have the authority to select, procure, and use textbooks not adopted by the State Board of Education as provided in G.S. 115C-98(b1).

(34) To Encourage the Business Community to Facilitate Student Achievement. — Local boards of education, in consultation with local business leaders, shall develop voluntary guidelines relating to after-school employment. The guidelines may include an agreement to limit

the number of hours a student may work or to tie the number of hours a student may work to his academic performance, school attendance, and economic need. The General Assembly finds that local boards of education do not currently have information regarding how many of their students are employed after school and how many hours they work; the General Assembly urges local boards of education to compile this critical information so that the State can determine to what extent these students' work affects their school performance.

Local boards of education shall work with local business leaders to encourage employers to provide parents or guardians with time to attend conferences with their children's teachers.

The Superintendent of Public Instruction shall provide guidance and technical assistance to the local boards of education on carrying out the provisions of this subdivision.

(35) To produce school building improvement reports. — Each administrative unit shall produce school building improvement reports for each school building in the local school administrative unit, in accordance with G.S. 115C-12(9)c3.

(36) To Report All Acts of School Violence. — Local boards of education shall report all acts of school violence to the State Board of Education in accordance with G.S. 115C-12(21).

(37) To purchase group accident and health insurance for students. — Local boards of education may purchase group accident, group health, or group accident and health insurance for students in accordance with G.S. 58-51-81.

(38) To Establish School Improvement Teams. — Local boards shall adopt a policy to ensure that each principal has established a school improvement team under G.S. 115C-105.27 and in accordance with G.S. 115C-288(l). Local boards shall direct the superintendent or the superintendent's designee to provide appropriate guidance to principals to ensure that these teams are established and that the principals work together with these teams to develop, review, and amend school improvement plans for their schools.

(39) To Adopt Policies Related to Student Retention Decisions. — Local boards shall adopt policies related to G.S. 115C-45(c) that include opportunities for parents and guardians to discuss decisions to retain students.

(40) To adopt emergency response plans. — Local boards of education may adopt emergency response plans relating to incidents of school violence. These plans are not a public record as the term "public record" is defined under G.S. 132-1 and shall not be subject to inspection and examination under G.S. 132-6.

(41) To Encourage Recycling in Public Schools. — Local boards of education shall encourage recycling in public schools and may develop and implement recycling programs at public schools.

(42) Recodified as G.S. 115C-375.3 by Session Laws 2005-22, s. 3(a), effective April 28, 2005.

(43) Local boards of education are encouraged to adopt policies that require superintendents to assign to the core academic courses, in seventh through ninth grades, teachers who have at least four years' teaching experience and who have received within the last three years an overall rating on a formal evaluation that is at least above standard.

(44) Recodified as G.S. 115C-375.4 by Session Laws 2005-22, s. 4(a), effective April 28, 2005.

(45) To Report Certain Incidents of Seclusion and Restraint. — Local boards of education shall maintain a record of incidents reported

under G.S. 115C-391.1(j)(4) and shall provide this information annually to the State Board of Education.

(46) At the discretion of the board, to adopt policies and procedures authorizing schools that operate programs under G.S. 115C-307(c) to utilize unlicensed health care personnel to perform the technical aspects of medication administration to students. If adopted, the policies and procedures shall be consistent with the requirements of Article 9A of Chapter 90 of the General Statutes and shall include the following:

a. Training and competency evaluation of medication aides as provided for under G.S. 131E-270.

b. Requirements for listing under the Medication Aide Registry as provided for under G.S. 131E-271.

c. Requirements for supervision of medication aides by licensed health professionals or appropriately qualified supervisory personnel consistent with Articles 5, 6, 10, and 16 of Chapter 131E of the General Statutes.

(47) To Address the Use of Pesticides in Schools. — Local boards of education shall adopt policies that address the use of pesticides in schools. These policies shall:

a. Require the principal or the principal's designee to annually notify the students' parents, guardians, or custodians as well as school staff of the schedule of pesticide use on school property and their right to request notification. Such notification shall be made, to the extent possible, at least 72 hours in advance of nonscheduled pesticide use on school property. The notification requirements under this subdivision do not apply to the application of the following types of pesticide products: antimicrobial cleansers, disinfectants, self-contained baits and crack-and-crevice treatments, and any pesticide products classified by the United States Environmental Protection Agency as belonging to the U.S.E.P.A. Toxicity Class IV, "relatively nontoxic" (no signal word required on the product's label).

b. **(Effective October 1, 2011)** Require the use of Integrated Pest Management. As used in this sub-subdivision, "Integrated Pest Management" or "IPM" means the comprehensive approach to pest management that combines biological, physical, chemical, and cultural tactics as well as effective, economic, environmentally sound, and socially acceptable methods to prevent and solve pest problems that emphasizes pest prevention and provides a decision-making process for determining if, when, and where pest suppression is needed and what control tactics and methods are appropriate.

(48) To Address Arsenic-Treated Wood in the Classroom and on School Grounds. — Local boards of education shall prohibit the purchase or acceptance of chromated copper arsenate-treated wood for future use on school grounds. Local boards of education shall seal existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds, according to the guidelines established under G.S. 115C-12(33). Local boards of education are encouraged to test the soil on school grounds for contamination caused by the leaching of arsenic-treated wood.

(49) To Address Mercury in the Classroom and on School Grounds. — Local boards of education are encouraged to remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not

including barometers. Local boards of education shall prohibit the future use of bulk elemental mercury, chemical mercury compounds, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers.

(50) To Address Exposure to Diesel Exhaust Fumes. — Local boards of education shall adopt policies and procedures to reduce students' exposure to diesel emissions.

(51) To Ensure that Schools Provide Information Concerning Cervical Cancer, Cervical Dysplasia, Human Papillomavirus, and the Vaccines Available to Prevent These Diseases. — Local boards of education shall ensure that schools provide parents and guardians with information about cervical cancer, cervical dysplasia, human papillomavirus, and the vaccines available to prevent these diseases. This information shall be provided at the beginning of the school year to parents of children entering grades five through 12. This information shall include the causes and symptoms of these diseases, how they are transmitted, how they may be prevented by vaccination, including the benefits and possible side effects of vaccination, and places parents and guardians may obtain additional information and vaccinations for their children.

(52) To Ensure That Certain Students Receive Information Annually on Lawfully Abandoning a Newborn Baby. — Not later than August 1, 2008, local boards of education shall adopt policies to ensure that students in grades nine through 12 receive information annually on the manner in which a parent may lawfully abandon a newborn baby with a responsible person, in accordance with G.S. 7B-500. (1955, c. 1372, art. 5, ss. 18, 28, 30, 33; art. 6, s. 6; art. 17, s. 7; c. 1185; 1959, c. 1294; 1963, c. 425; c. 688, s. 3; 1965, c. 584, ss. 4, 6; c. 1185, s. 1; 1969, c. 517, s. 2; c. 538; 1973, c. 770, ss. 1, 2; c. 782, s. 31; 1975, c. 150, s. 1; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; c. 901, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 2, 1; c. 1034, s. 16; 1985, c. 436, s. 1; c. 479, ss. 55(c)(4), 55(c)(6); c. 637; c. 757, s. 145(i); 1985 (Reg. Sess., 1986), c. 975, ss. 3, 11; c. 1014, s. 58; 1987, c. 340; c. 414, s. 2; c. 571, s. 2; c. 738, s. 182; 1987 (Reg. Sess., 1988), c. 1025, ss. 9, 15; c. 1086, s. 89(b); 1989, c. 585, s. 2; c. 752, s. 65(b); 1989 (Reg. Sess., 1990), c. 1074, s. 23(b); 1991, c. 706, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 75.1(f); 1993, c. 114, s. 1; c. 321, s. 139(c); 1993 (Reg. Sess., 1994), c. 716, s. 2; c. 775, s. 5; 1995, c. 455, s. 1; c. 497, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 716, ss. 11, 12, 17; 1997-443, s. 8.38(j)-(l); 1998-194, s. 3; 1998-202, s. 12; 1999-96, s. 7; 1999-237, s. 8.25(a); 1999-373, s. 3; 1999-397, s. 4; 1999-456, s. 35; 2000-67, s. 8.18(b); 2000-140, s. 77; 2001-424, s. 28.17(c); 2001-500, s. 3; 2001-512, s. 12; 2002-103, s. 2; 2002-178, s. 3; 2003-147, s. 4; 2004-118, s. 2; 2004-203, s. 72(b); 2005-22, ss. 3(a), 4(a); 2005-205, s. 5; 2005-276, s. 10.40D(f); 2005-355, s. 2; 2005-446, s. 3; 2006-137, s. 1; 2006-143, s. 2; 2007-59, s. 1; 2007-126, s. 1.)

Subdivision (12) Set Out Twice. — The first version of subdivision (12) set out above is effective until the components of the standard course of study have been fully incorporated and implemented as a part of the Basic Education Program. The second version of subdivision (12) set out above is effective when the components of the standard course of study have been fully incorporated and implemented as a part of the Basic Education Program. See Session Laws 1985, c. 479, s. 55(c)(6).

Editor's Note. —

This section was amended in the coded bill drafting format by Session Laws 2006-143, s. 2, Session Laws 2007-59, s. 1, and Session Laws 2007-126, s. 1. Those acts failed to incorporate previous amendments to this section made by Session Laws 2005-205 and Session Laws 2005-276. At the direction of the Revisor of Statutes, subdivisions (45) through (48), as added by

Session Laws 2006-143, s. 2, have been renumbered as subdivisions (47) through (50), subdivision (49), as added by Session Laws 2007-59, s. 1, has been renumbered as subdivision (51), and subdivision (50), as added by Session Laws 2007-126, s. 1, has been renumbered as subdivision (52).

Session Laws 2008-187, s. 45.8, amended this section contingent on the enactment of House Bill 359, 2007 Regular Session. House Bill 359 was not enacted.

CASE NOTES

Power to Establish School Calendar. — G.S. 115C-47(11) authorized a board of education to determine the school calendar under G.S. 115C-84.2, which did not bar year-round schools. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

SUBCHAPTER IV. EDUCATION PROGRAM.

Article 8.

General Education.

Part 1. Courses of Study.

§ 115C-81. Basic Education Program.

NC Virtual Public School Program. — Session Laws 2007-323, s. 7.20(a)-(f), as amended by Session Laws 2008-107, s. 7.4(a), provides: "(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

"(b) The Director of NCVPS shall continue to ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the North Carolina Virtual Public School program, eliminating course duplication.

"(c) Subsequent to course consolidation, the Director shall prioritize e-learning course offerings for students residing in rural and low-wealth county LEAs, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

"(d) The State Board of Education shall implement an allotment formula developed pursuant to Section 7.16(d) of S.L. 2006-66, for funding e-learning, effective in the 2009-2010 fiscal year. NCVPS shall be available at no cost to all students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs. The Department of Public Instruction shall communicate to local school administrative units all applicable guidelines regarding the enrollment of nonpublic school students in these courses.

"The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2008, on its implementation of this section.

"Funds appropriated for NCVPS shall not revert at the end of the 2007-2008 fiscal year but shall remain available for expenditure in the 2008-2009 fiscal year.

"(f) The State Board of Education may convert the 22 three-month positions that were authorized for NCVPS in S.L. 2006-66 to five full-time positions if the Board determines that it is appropriate to do so."

Task Force on Preventing Childhood Obesity. — Session Laws 2008-107, s. 10.17(cc), as amended by Session Laws 2008-118, s. 1.5(b), provides: "The sum of one hundred thousand dollars ($100,000) appropriated in this section in the Maternal and Child Health Block Grant to the Department of Health and Humans Services, Division of Public Health, for the 2008-2009 fiscal year shall be used to establish a Task Force on Preventing Childhood Obesity (Task Force) to be cochaired by the State Health Director and the Chairman of the State Board of Education. The Task Force is to review current State activities in the

Department of Health and Human Services, the Department of Public Instruction, and the Health and Wellness Trust Fund and develop a comprehensive statewide strategic plan with recommendations for preventing childhood obesity. The goals of the strategic plan shall encompass the following framework of initiatives:

"(1) Providing healthier foods to students;

"(2) Improving the availability of healthy foods at home and in the community;

"(3) Increasing the frequency, intensity, and duration of physical activity in schools;

"(4) Encouraging communities to establish a master plan for pedestrian and bicycle pathways;

"(5) Improving access to safe places where children can play; and

"(6) Developing activities or programs that limit children's screen time, including limits on video games and television.

"Membership on the task force shall include, but is not limited to, representatives from the following organizations:

"(1) Health and Wellness Trust Fund.

"(2) North Carolina Institute for Public Health.

"(3) UNC Active Living by Design.

"(4) Blue Cross Blue Shield of North Carolina.

"(5) NC Hospital Association.

"(6) NC Parent Teacher Association.

"(7) American Heart Association.

"(8) School Nutrition Association of North Carolina.

"(9) Association of Local Health Directors.

"The Chairman of the State Board of Education and the State Health Director shall report to the House of Representatives Chairs of the Appropriations Subcommittees on Health and Human Services and Education, the Senate Chairs of the Appropriations Committees on Health and Human Services and Education/Public Instruction, the Joint Legislative Oversight Committee on Education, the Joint Legislative Oversight Committee on Health, and the Fiscal Research Division on the Task Force on Preventing Childhood Obesity's strategic plan and recommendations by January 15, 2009, or upon the convening of the 2009 Session of the General Assembly, whichever occurs first."

Maternal and Child Health Block Grant. — Session Laws 2008-107, s. 10.17(dd) and (ee), provide: "(dd) If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2008-2009 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an Abstinence Until Marriage Education Program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

"(ee) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program."

For prior similar provisions, see Session Laws 2002-126, s. 5.1(f), Session Laws 2004-124, s. 5.1(aa) and (bb), Session Laws 2005-276, s. 5.1(aa) and (bb), and Session Laws 2007-323, s. 10.55(bb) and (cc).

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Part 2. Calendar.

§ 115C-84.2. School calendar.

CASE NOTES

Authority to Create and Operate Year Round Schools. — Board of Education had the authority under G.S. 115C-84.2(a) to create and operate year-round schools. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Exemption of Year Round Schools from Teacher's Summer Vacation Requirement. — G.S. 115C-84.2(b)(2) specifically exempts year-round schools from the statute's apparent protection of a teacher's summer vacation. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Minimum Quantum of Education Re-

quired. — G.S. 115C-1, consistent with the purpose of the constitutional provision it was designed to implement, does not mandate equal access to a school term of nine consecutive months, but rather refers to the minimum quantum of educational instruction required. How that minimum quantum of instruction is translated into an annual school calendar is then prescribed by G.S. 115C-84.2(a)(1), (b)(2), which sets out certain requirements, but otherwise mandates that the local board shall designate when the 180 instructional days shall occur and specifically recognizes year-round schools as a permissible calendaring scheme. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Construction with G.S. 115C-1. — G.S. 115C-1, especially as a codification of N.C. Const., Art. IX, § 5, can be read as setting a floor for the quantum of education required. Any other construction of the statute would place G.S. 115C-1 in conflict with G.S. 115C-84.2(a)(1)'s requirement that a school calendar include a minimum of 180 days and 1,000 hours of instruction covering at least 9 calendar months. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Year Round Schools are not Outside the Calendar Programs. — Since the provision in G.S. 115C-84.2(d) referencing "year-round schools" governs calendars permitted under the statute, "year-round schools" necessarily do not constitute programs "outside the calendar" permitted by the statute. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Year Round Schools. — Both the "traditional" calendar schools and "year-round" calendar schools options comply with the requirements set out in G.S. 115C-84.2(a) and (b). Thus, a Board of Education had authority under these statutes to operate year-round schools. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Express language of G.S. 115C-84.2 exempting year-round schools from the calendar-design restrictions demonstrates that the General Assembly recognized a year-round calendar as a valid alternative to the traditional calendar (which includes a significant summer vacation). Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Board of Education May Establish Year Round Schools. — G.S. 115C-47(11) authorized a board of education to determine the school calendar under G.S. 115C-84.2, which did not bar year-round schools. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

ARTICLE 9.

Education of Children With Disabilities.

Part 1A. General Provisions.

§ 115C-106.1. State goal.

Editor's Note. —

Session Laws 2008-83, s. 2, provides: "The UNC-CH Division TEACCH Autism Program (TEACCH), in consultation with the School of Government and the Autism Society of NC, shall develop a video to raise awareness of autism for those involved in government and public service, including information on recognizing the signs and symptoms of autism spectrum disorders, and contacts for further information on appropriate responses to individuals with autism."

Session Laws 2008-174, s. 1, provides: "The State Board of Education and Department of Health and Human Services shall jointly meet and make a determination as to which public agency is responsible for providing special education and related services as required under Article 9 of Chapter 115C of the General Statutes and the federal Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 144, et seq., (2004), as amended, for children with disabilities who are placed in private psychiatric residential treatment facilities by a public agency other than the local educational agency. The State Board of Education and Department of Health and Human Services shall report the determination and any recommended legislation or policy changes by January 1, 2009, to the Joint Legislative Education Oversight Committee and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services."

§ 115C-106.3. Definitions.

The following definitions apply in this Article:

(1) "Child with a disability" means a child with at least one disability who because of that disability requires special education and related services.

(2) "Disability" includes mental retardation; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; serious emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments, specific learning disability, or other disability as may be required to be included under IDEA. For a child ages three through seven, this term also includes developmental delay.

(3) "Dispute" means a disagreement between the parties.

(3a) "Educational services" means all of the following:

a. The necessary instructional hours per week in the form and format as determined by the child's IEP team and consistent with federal and State law. The instruction shall be delivered by an appropriately qualified teacher to the extent required by federal and State law, which requires a free appropriate public education and the opportunity for a sound basic education.

b. Related services included in the child's IEP.

c. Behavior intervention services to the extent required by federal law.

(4) "Free appropriate public education" means special education and related services that:

a. Are provided at public expense, under public supervision and direction, and without charge;

b. Meet the standards of the State Board;

c. Include an appropriate preschool, elementary school, or secondary school education in the State; and

d. Are provided in conformity with an individualized education program.

(5) "Hearing officers" include administrative law judges as defined in G.S. 150B-2(1) and hearing review officers.

(5a) "Homebound instruction" means educational services provided to a student outside the school setting.

(6) "IDEA" means The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and federal regulations adopted under this act.

(7) "IEP Team" is as defined in IDEA.

(8) "Individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, implemented, and revised consistent with IDEA and State law.

(9) "Infant or toddler with a disability" is as defined in IDEA.

(10) "Least restrictive environment" means to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(11) "Local educational agency" includes any of the following that provides special education and related services to children with disabilities:

a. A local school administrative unit.

  b. A charter school.
  c. The Department of Health and Human Services.
  d. The Department of Correction.
  e. The Department of Juvenile Justice and Delinquency Prevention.
  f. Any other State agency or unit of local government.

(12) "Mediation" means an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.

(13) "Mediator" means a neutral person who acts to encourage and facilitate a resolution of a dispute.

(14) "Parent" means:
  a. A natural, adoptive, or foster parent;
  b. A guardian, but not the State if the child is a ward of the State;
  c. An individual acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative, and with whom the child lives;
  d. An individual who is legally responsible for the child's welfare; or
  e. A surrogate if one is appointed under G.S. 115C-109.2.

(15) "Party" or "Parties" means the local educational agency or the parents, or both.

(16) "Petition" means a request for a due process hearing as provided for under IDEA.

(17) "Preschool child with a disability" means a child with one or more disabilities who meets all of the following criteria:
  a. Has reached his or her third birthday and whose parents have requested services from the public schools.
  b. Is not eligible to enroll in public kindergarten.
  c. Because of the disability, needs special education and related services in order to prepare the child to benefit from the educational programs provided by the public schools, beginning with kindergarten.

(18) "Related services" is as defined in IDEA.

(18a) "Residence" or "reside" means the place where a child with a disability is entitled to be enrolled in a North Carolina public school under G.S. 115C-366 except for the age requirements of that section. This definition shall not apply to children with disabilities who were (i) enrolled in a particular local school administrative unit on the last day of school for the 2006-2007 school year, or (ii) enrolled in and attending a school in a particular local school administrative unit on August 1, 2007, for the 2007-2008 school year for as long as they live within and are continuously enrolled in that local school administrative unit.

(19) "Rules" includes rules, policies, and procedures. Rules as defined in G.S. 150B-2(8a) shall be adopted in accordance with Article 2A of Chapter 150B of the General Statutes.

(20) "Special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. The term includes instruction in physical education and instruction conducted in a classroom, the home, a hospital or institution, and other settings. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 23, 24; 1985, c. 479, s. 26(a);1985, c. 780, ss. 3, 4; 1989(Reg. Sess., 1990), c. 1003, s. 5; 1996, 2nd Ex. Sess., ch. 18, s. 18.24(b); 2006-69, s. 2; 2007-292, s. 1; 2007-429, s. 1; 2008-90, s. 1.)

Effect of Amendments. — Session Laws 2008-90, s. 1, effective July 11, 2008, substituted "to the extent required by federal law" for "designed to address the behavior violation that caused the disciplinary change of placement in order to prevent a recurrence" in subdivision (3a)c.

Part 1B. Provision of Free Appropriate Public Education.

§ 115C-107.7. Discipline and homebound instruction.

(a) The policies and procedures for the discipline of students with disabilities shall be consistent with federal laws and regulations.

(b) If a change of placement occurs under the discipline regulations of IDEA, a local educational agency shall not assign a student to homebound instruction without a determination by the student's IEP team that the homebound instruction is the least restrictive alternative environment for that student. If it is determined that the homebound instruction is the least restrictive alternative environment for the student, the student's IEP team shall meet to determine the nature of the homebound educational services to be provided to the student. In addition, the continued appropriateness of the homebound instruction shall be evaluated monthly by the designee or designees of the student's IEP team.

(c) **(Effective January 1, 2009, and expires March 1, 2011 — see notes)** A local educational agency shall be deemed to have a "basis of knowledge" that a child is a child with a disability if, prior to the behavior that precipitated the disciplinary action, the behavior and performance of the child clearly and convincingly establishes the need for special education. Prior disciplinary infractions shall not, standing alone, constitute clear and convincing evidence. (2006-69, s. 2; 2007-425, s. 1; 2008-90, ss. 2, 3.)

Editor's Note. — Session Laws 2008-90, s. 4 provides: "The Department of Public Instruction and the State Board of Education shall report to the Joint Legislative Education Oversight Committee by January 15, 2011, on the number of contested cases that are filed based on Section 3 of this act [which enacted G.S. 115C-107.7(c)] and the disposition of those contested cases."

Session Laws 2008-90, s. 5, provided that subsection (c) of this section is effective January 1, 2009, and expires March 1, 2011.

Effect of Amendments. —

Session Laws 2008-90, s. 2, effective July 11, 2008, substituted "designee or designees of the student's IEP team" for "head of the student's IEP team" in the last sentence of subsection (b).

Session Laws 2008-90, s. 3, effective January 1, 2009, and expiring March 1, 2011, added subsection (c).

Article 16.

Optional Programs.

Part 6A. Charter Schools.

§ 115C-238.29A. Purpose.

CASE NOTES

Amount Per Pupil Calculation. — Trial court's determination that the system incorrectly calculated the per pupil local current expense appropriation was correct. If a student attended a charter school, the system was required to transfer to the charter school an amount equal to the per pupil local current expense appropriation contained in the local current expense fund, but the evidence showed that the system failed to so because it failed to allocate funds to the system and the charter schools on the same basis. Sugar Creek Charter

Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

Part 9. Cooperative Innovative High School Programs.

§ 115C-238.50. Purpose.

Learn and Earn Online. — Session Laws 2008-107, s. 7.5, provides: "(a) Funds appropriated for Learn and Earn Online that are unexpended or unencumbered at the end of each fiscal year shall not revert, but shall remain available for expenditure.

"(b) This section becomes effective June 30, 2008."

Session Laws 2008-107, s. 8.6(a), provides: "Funds reimbursed to the Community College System for full-time equivalent (FTE) students participating in learn and earn online courses shall not revert at the end of a fiscal year, but shall remain available for expenditure up to 12 months after the close of a fiscal year."

Plan and Funding for a Virtual High School. — Session Laws 2007-323, s. 7.20(a)-(f), as amended by Session Laws 2008-107, s. 7.4(a), provides: "(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

"(b) The Director of NCVPS shall continue to ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the North Carolina Virtual Public School program, eliminating course duplication.

"(c) Subsequent to course consolidation, the Director shall prioritize e-learning course offerings for students residing in rural and low-wealth county LEAs, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

"(d) The State Board of Education shall implement an allotment formula developed pursuant to Section 7.16(d) of S.L. 2006-66, for funding e-learning, effective in the 2009-2010 fiscal year. NCVPS shall be available at no cost to all students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs. The Department of Public Instruction shall communicate to local school administrative units all applicable guidelines regarding the enrollment of nonpublic school students in these courses.

"The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2008, on its implementation of this section.

"Funds appropriated for NCVPS shall not revert at the end of the 2007-2008 fiscal year but shall remain available for expenditure in the 2008-2009 fiscal year.

"(f) The State Board of Education may convert the 22 three-month positions that were authorized for NCVPS in S.L. 2006-66 to five full-time positions if the Board determines that it is appropriate to do so."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 17.

Supporting Services.

Part 2. Food Service.

§ 115C-264.3. Child Nutrition Program standards.

The State Board of Education, in direct consultation with a cross section of local directors of child nutrition services, shall establish statewide nutrition standards for school meals, a la carte foods and beverages, and items served in the After School Snack Program administered by the Department of Public Instruction and child nutrition programs of local school administrative units. The nutrition standards will promote gradual changes to increase fruits and vegetables, increase whole grain products, and decrease foods high in total fat, trans fat, saturated fat, and sugar. The nutrition standards adopted by the State Board of Education shall be implemented initially in elementary schools. All elementary schools shall achieve a basic level by the end of the 2009-2010 school year, followed by middle schools and then high schools. (2005-457, s. 1; 2007-323, s. 7.36A(a); 2008-107, s. 7.25(a).)

Editor's Note. —

Session Laws 2008-107, s. 7.25(b), provides: "Local school administrative units are encouraged to take steps to implement within existing funds and to the extent possible the nutrition program standards under G.S. 115C-264.3 by the end of the 2008-2009 school year."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 7.25(a), effective July 1, 2008, substituted "2009-2010" for "2008-2009" near the end of the section.

SUBCHAPTER V. PERSONNEL.

ARTICLE 19.

Principals and Supervisors.

§ 115C-284. Method of selection and requirements.

(a) Principals and supervisors shall be elected by the local boards of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

(b) In the city administrative units, principals shall be elected by the board of education of such administrative unit upon the recommendation of the superintendent of city schools.

(b1) To qualify for certification as a school administrator, an individual must meet all of the following requirements:

(1) Submit a complete application to the State Board.
(2) Pay the applicable fee.
(3) Have a bachelor's degree from an accredited college or accredited university.
(4) Have one of the following:
    a. A graduate degree from a public school administration program that meets the public school administration program approval standards established by the State Board of Education.
    b. A master's degree from an accredited college or accredited university and, by December 31, 1999, have completed a public school administration program that meets the public school administration program approval standards set by the State Board of Education.
    c. Education and training determined by the State Board of Education as equivalent.

(5) Pass the exam adopted by the State Board.

(c) The State Board of Education shall have entire control of certifying all applicants for supervisory and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes. The State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose. If the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972. The Board shall not issue provisional certificates for principals.

The Board shall issue a one-year provisional assistant principal's certificate to an employee of a local board only if: (i) the local board determines there is a shortage of persons who hold or are qualified to hold a principal's certificate and the employee enrolls in an approved program leading to a masters degree in school administration before the provisional certificate expires; or (ii) the employee is enrolled in an approved masters in school administration program and is participating in the required internship under the masters program. The Board shall extend the provisional certificate for a total of no more than two additional years while the employee is completing the program.

(c1) It is the policy of the State of North Carolina to maintain the highest quality principal and assistant principal education programs in order to enhance the competence of professional personnel certified in North Carolina. To ensure that principal and assistant principal preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education shall submit to the General Assembly not later than March 1, 1992, a plan to promote this policy. In developing this plan, the State Board shall consider (i) requiring these programs to include additional preparation for site-based decision making and for the additional autonomy being granted to local school units, (ii) enhancing program entrance requirements to include assessment of an applicant's ability to complete the program and to perform as a principal, and (iii) enhancing the overall content of the programs.

The State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors and such other public and private agencies as are necessary, shall refine the several certification requirements, standards for approval of institutions of principal and assistant principal education, standards for institution-based innovative and experimental programs, and standards for improved efficiencies in the administration of the approved programs.

(c2) The State Board of Education shall adopt new standards by July 1, 2008, for school administrator preparation programs. The new standards shall:

(1) Be aligned with the revised standards for the evaluation of school executives and specifically address the use of the results of the Teacher Working Conditions Survey;

(2) Require evidence of a high level of institutional commitment, including dedicated resources, for administrator preparation program improvements and redesign;

(3) Require the use of cross-functional work teams to determine a common curriculum framework that (i) is designed to align with defined standards, (ii) includes rigorous core courses, and (iii) will produce administrators who meet the defined standards. The cross-functional

work teams shall include school-based personnel, faculty from schools of education and other disciplines from institutions of higher education, and representatives of State agencies;

(4) Require the use of cross-functional work teams to design and periodically update specific standards regarding placement, required activities, and evaluations of clinical experiences. These standards shall include appropriate training for the school leaders who agree to accept and supervise interns;

(5) Require written agreements between the institution of higher education and a local school administrative unit to govern their shared responsibility for (i) recruitment and preparation of school administrators, especially with regard to clinical experiences including the internship, and (ii) a new administrator's success once employed;

(6) Require authentic partnerships between adjunct faculty and full-time faculty to fully address the need for both practical, field-based experience and academic, theory-based experience. These partnerships may require a change in the institution of higher education's definition of scholarly activity and its reward system;

(7) Require all candidates to complete a year-long internship; and

(8) Require the development of portfolios for emerging leaders that provide evidence they are applying their training to actual school needs and challenges.

Institutions of higher education shall redesign their school administrator preparation programs to meet the new standards and report to the State Board of Education on the redesign by July 1, 2009.

(d) Repealed by Session Laws 1989, c. 385, s. 1.

(d1) It is the policy of the State of North Carolina that, subsequent to the adoption of a system of classroom teacher differentiation and prerequisites to candidacy for principal, a classroom teacher must have attained at least the second level of differentiation, have at least four years of classroom teaching experience, and possess, at least, a Masters Degree in Education Administration. This subsection shall not apply to educational personnel certified as of July 1, 1984.

(e) It shall be unlawful for any board of education to employ or keep in service any principal or supervisor who neither holds nor is qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education.

(f) The allotment of classified principals shall be one principal for each duly constituted school with seven or more state-allotted teachers.

(g) Local boards of education shall have authority to employ supervisors in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the local school administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such supervisors shall be assigned by the superintendent with the approval of the board of education.

(h) All principals and supervisors employed in the public schools of the State or in schools receiving public funds, shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education. (1955, c. 1372 art. 5, ss. 4, 27; art. 6, s. 6; art. 18, ss. 1-4; 1963, c. 688, s. 3; 1965, c. 584, ss. 6, 20.1; 1969, c. 539; 1971, c. 1188, s. 1; 1973, cc. 236, 733; c. 770, ss. 1, 2; 1975, c. 437, s. 7; c. 686, s. 1; c. 731, ss. 1, 2; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 4; 1985 (Reg. Sess., 1986), c. 975, s. 16; 1989, c. 385, s. 1; 1991, c. 689, s. 200(a); 1991 (Reg. Sess., 1992), c. 1030, s. 28; 1993, c. 392, s. 2; 1999-30, s. 1; 1999-394, s. 1; 2006-264, s. 56(b); 2007-517, s. 1; 2008-187, s. 43.)

Effect of Amendments. — Session Laws 2008-187, s. 43, effective August 7, 2008, added subsection (b1).

Article 20.

Teachers.

§ 115C-296.2. National Board for Professional Teaching Standards Certification.

(a) State Policy. — It is the goal of the State to provide opportunities and incentives for good teachers to become excellent teachers and to retain them in the teaching profession; to attain this goal, the State shall support the efforts of teachers to achieve national certification by providing approved paid leave time for teachers participating in the process, paying the participation fee, and paying a significant salary differential to teachers who attain national certification from the National Board for Professional Teaching Standards (NBPTS).

The National Board for Professional Teaching Standards (NBPTS) was established in 1987 as an independent, nonprofit organization to establish high standards for teachers' knowledge and performance and for development and operation of a national voluntary system to assess and certify teachers who meet those standards. Participation in the program gives teachers the time and the opportunity to analyze in a systematic way their professional development as teachers, successful teaching strategies, and the substantive areas in which they teach. Participation also gives teachers an opportunity to demonstrate superior ability and to be compensated as superior teachers. To receive NBPTS certification, a teacher must successfully (i) complete a process of developing a portfolio of student work and videotapes of teaching and learning activities and (ii) participate in NBPTS assessment center simulation exercises, including performance-based activities and a content knowledge examination.

(b) Definitions. — As used in this subsection:

(1) A "North Carolina public school" is a school operated by a local board of education, the Department of Health and Human Services, the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention or The University of North Carolina; a school affiliated with The University of North Carolina; or a charter school approved by the State Board of Education.

(2) A "teacher" is a person who:

a. Either:

1. Is certified to teach in North Carolina; or
2. Holds a certificate or license issued by the State Board of Education that meets the professional license requirement for NBPTS certification;

b. Is a State-paid employee of a North Carolina public school;

c. Is paid on the teacher salary schedule; and

d. Fulfills one of the following:

1. Spends at least seventy percent (70%) of his or her work time in classroom instruction, if the employee is employed as a teacher. Most of the teacher's remaining time shall be spent in one or more of the following: mentoring teachers, doing demonstration lessons for teachers, writing curricula, developing and leading staff development programs for teachers;

2. Spends at least seventy percent (70%) of his or her work time in work within the employee's area of certification or licensure, if the employee is employed in an area of NBPTS certification other than direct classroom instruction; or
3. Serves as a full-time mentor under subsection (e1) of this section.

(c) Payment of the NBPTS Participation Fee; Paid Leave. — The State shall pay the NBPTS participation fee and shall provide up to three days of approved paid leave to all teachers participating in the NBPTS program who:

(1) Have completed three full years of teaching in a North Carolina public school; and

(2) Have (i) not previously received State funds for participating in any certification area in the NBPTS program, (ii) repaid any State funds previously received for the NBPTS certification process, or (iii) received a waiver of repayment from the State Board of Education.

Teachers participating in the program shall take paid leave only with the approval of their supervisors.

(d) Repayment by a Teacher Who Does Not Complete the Process. — A teacher for whom the State pays the participation fee who does not complete the process shall repay the certification fee to the State.

Repayment is not required if a teacher does not complete the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may waive the repayment requirement if the State Board finds that the teacher was unable to complete the process due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

(e) Repayment by a Teacher Who Does Not Teach for a Year After Completing the Process. — A teacher for whom the State pays the participation fee who does not teach for a year in a North Carolina public school after completing the process shall repay the certification fee to the State.

Repayment is not required if a teacher does not teach in a North Carolina public school for at least one year after completing the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may extend the time before which a teacher must either teach for a year or repay the participation fee if the State Board finds that the teacher is unable to teach the next year due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

(e1) Assignment of Teachers With NBPTS Certification to Serve as Full-Time Mentors. — A local board of education may assign teachers with NBPTS certification to serve as full-time mentors as follows:

(1) The maximum number of teachers with NBPTS certification that a local board of education may assign to serve as full-time mentors is the greater of (i) five or (ii) five percent (5%) of the number of teachers with NBPTS certification it has employed during the school year immediately preceding the assignment of teachers as full-time mentors.

(2) A teacher must teach in a classroom for at least two years after receiving NBPTS certification to be eligible for assignment as a full-time mentor.

(3) A teacher must have completed the mentor training required by the teacher's local school administrative unit to be eligible for assignment as a full-time mentor.

(4) A teacher may serve as a full-time mentor for up to three consecutive years.

(5) After service as a full-time mentor, a teacher must teach in a classroom for at least three years to be eligible for reassignment as a full-time mentor.

(6) A teacher serving as a full-time mentor shall be school-based, work at one or more schools, and mentor each year at least 15 newly hired teachers who are in their first through third year of teaching.

(f) Rules. — The State Board shall adopt policies and guidelines to implement this section. (2000-67, s. 8.16; 2000-137, s. 3; 2008-86, s. 1.)

Editor's Note. —

Session Laws 2008-86, s. 2, provides: "Teachers with NBPTS certification serving as full-time mentors under G.S. 115C-296.2(e1) shall remain on the NBPTS teacher salary schedule."

Session Laws 2008-86, s. 3, provides: "The State Board of Education shall monitor and assess the effectiveness and impact of allowing teachers with NBPTS certification to serve as full-time mentors and shall report its findings to the Joint Legislative Education Oversight Committee prior to April 15, 2010."

Effect of Amendments. — Session Laws 2008-86, s. 1, effective July 1, 2008, rewrote subdivision (b)(2)d. and added subsection (e1).

§ 115C-302.1. Salary.

(a) Prompt Payment. — Teachers shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All teachers employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as State-allotted teachers are paid.

(b) Salary Payments. — State-allotted teachers shall be paid for a term of 10 months. State-allotted months of employment for vocational education to local boards shall be used for the employment of teachers of vocational and technical education for a term of employment to be determined by the local boards of education. However, local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 1982-83 school year for any school year thereafter. In addition, local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 2003-2004 school year for any school year thereafter.

Each local board of education shall establish a set date on which monthly salary payments to State-allotted teachers shall be made. This set pay date may differ from the end of the month of service. The daily rate of pay for teachers shall equal midway between one twenty-first and one twenty-second of the monthly rate of pay. Except for teachers employed in a year-round school or paid in accordance with a year-round calendar, or both, the initial pay date for teachers shall be no later than August 31 and shall include a full monthly payment. Subsequent pay dates shall be spaced no more than one month apart and shall include a full monthly payment.

Teachers may be prepaid on the monthly pay date for days not yet worked. A teacher who fails to attend scheduled workdays or who has not worked the number of days for which the teacher has been paid and who resigns, is dismissed, or whose contract is not renewed shall repay to the local board any salary payments received for days not yet worked. A teacher who has been prepaid and continues to be employed by a local board but fails to attend scheduled workdays may be subject to dismissal under G.S. 115C-325 or other appropriate discipline.

Any individual teacher who is not employed in a year-round school may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. The request shall be filed in the local school administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease the teacher's

G.S. 115C-302.1(d) is set out twice. See note.

annual salary nor in any other way alter the contract made between the teacher and the local school administrative unit. Teachers employed for a period of less than 10 months shall not receive their salaries in 12 installments.

Notwithstanding this subsection, the term "daily rate of pay" for the purpose of G.S. 115C-12(8) or for any other law or policy governing pay or benefits based on the teacher salary schedule shall not exceed one twenty-second of a teacher's monthly rate of pay.

(c) Vacation. — Included within the 10-month term shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth of the annual rate for State employees for each month of employment. Local boards shall provide at least 10 days of annual vacation leave at a time when students are not scheduled to be in regular attendance. However, instructional personnel who do not require a substitute may use annual vacation leave on days that students are in attendance. Vocational and technical education teachers who are employed for 11 or 12 months may, with prior approval of the principal, work on annual vacation leave days designated in the school calendar and may use those annual vacation leave days during the eleventh or twelfth month of employment.

On a day that pupils are not required to attend school due to inclement weather, but employees are required to report for a workday, a teacher may elect not to report due to hazardous travel conditions and to take an annual vacation day or to make up the day at a time agreed upon by the teacher and the teacher's immediate supervisor or principal. On a day that school is closed to employees and pupils due to inclement weather, a teacher shall work on the scheduled makeup day.

All vacation leave taken by the teacher will be upon the authorization of the teacher's immediate supervisor and under policies established by the local board of education. Annual vacation leave shall not be used to extend the term of employment.

Notwithstanding any provisions of this subsection to the contrary, no person shall be entitled to pay for any vacation day not earned by that person.

(c1), (c2) Repealed by Session Laws 2002-126, s. 7.11(a), effective July 1, 2002, and applicable only to leave days accruing after September 30, 2002.

(c3) Teachers may accumulate annual vacation leave days without any applicable maximum until June 30 of each year. In order that only 30 days of annual vacation leave carry forward to July 1, on June 30 of each year any teacher or other personnel paid on the teacher salary schedule who has accumulated more than 30 days of annual vacation leave shall convert to sick leave the remaining excess accumulation.

Upon separation from service due to service retirement, resignation, dismissal, reduction in force, or death, an employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 30 days. In addition to the maximum of 30 days pay for accumulated annual leave, upon separation from service due to service retirement, any teacher or other personnel paid on the teacher salary schedule with more than 30 days of accumulated annual vacation leave may convert some or all of the excess accumulation to sick leave for creditable service towards retirement. Employees going onto term disability may exhaust annual leave rather than be paid in a lump sum.

(d) **(Effective until June 30, 2009)** Personal Leave. — Teachers earn personal leave at the rate of.20 days for each full month of employment not to exceed two days per year. Personal leave may be accumulated without any applicable maximum until June 30 of each year. A teacher may carry forward to July 1 a maximum of five days of personal leave; the remainder of the

G.S. 115C-302.1(d) is set out twice. See note.

teacher's personal leave shall be converted to sick leave on June 30. At the time of retirement, a teacher may also convert accumulated personal leave to sick leave for creditable service towards retirement.

Personal leave may be used only upon the authorization of the teacher's immediate supervisor. A teacher shall not take personal leave on the first day the teacher is required to report for the school year, on a required teacher workday, on days scheduled for State testing, or on the day before or the day after a holiday or scheduled vacation day, unless the request is approved by the principal. On all other days, if the request is made at least five days in advance, the request shall be automatically granted subject to the availability of a substitute teacher, and the teacher cannot be required to provide a reason for the request. Teachers may transfer personal leave days between local school administrative units. The local school administrative unit shall credit a teacher who has separated from service and is reemployed within 60 months from the date of separation with all personal leave accumulated at the time of separation. Local school administrative units shall not advance personal leave. Teachers using:

(1) Up to one day of personal leave per year shall receive full salary. Except as provided in subdivision (2) of this subsection, teachers using more than one day per year shall receive full salary less the required substitute deduction.

(2) Personal leave receive full salary less the required substitute deduction, except for teachers using personal leave on non-protected teacher workdays. Teachers using personal leave on non-protected teacher workdays shall receive full salary.

As used in this subsection, "teachers" means classroom teachers and media specialists who require a substitute.

(d) **(Effective June 30, 2009)** Personal Leave. — Teachers earn personal leave at the rate of .20 days for each full month of employment not to exceed two days per year. Personal leave may be accumulated without any applicable maximum until June 30 of each year. A teacher may carry forward to July 1 a maximum of five days of personal leave; the remainder of the teacher's personal leave shall be converted to sick leave on June 30. At the time of retirement, a teacher may also convert accumulated personal leave to sick leave for creditable service towards retirement.

Personal leave may be used only upon the authorization of the teacher's immediate supervisor. A teacher shall not take personal leave on the first day the teacher is required to report for the school year, on a required teacher workday, on days scheduled for State testing, or on the day before or the day after a holiday or scheduled vacation day, unless the request is approved by the principal. On all other days, if the request is made at least five days in advance, the request shall be automatically granted subject to the availability of a substitute teacher, and the teacher cannot be required to provide a reason for the request. Teachers may transfer personal leave days between local school administrative units. The local school administrative unit shall credit a teacher who has separated from service and is reemployed within 60 months from the date of separation with all personal leave accumulated at the time of separation. Local school administrative units shall not advance personal leave. Teachers using personal leave receive full salary less the required substitute deduction, except for teachers using personal leave on non-protected teacher workdays. Teachers using personal leave on non-protected teacher workdays shall receive full salary.

(e) Teachers in Year-Round Schools. — Compensation for teachers employed in year-round schools shall be the same as teachers paid for a 10-month term, but those days may be scheduled over 12 calendar months. Annual leave, sick leave, workdays, holidays, salary, and longevity for teachers who are employed at year-round schools shall be equivalent to those of other teachers employed for the same number of months, respectively. Teachers paid for a term of 10 months in year-round schools shall receive their salary in 12 equal installments.

(f) Overpayment. — Each local board of education shall sustain any loss by reason of an overpayment to any teacher paid from State funds.

(g) Service in Armed Forces. — The State Board of Education, in fixing the State standard salary schedule of teachers as authorized by law, shall provide that teachers who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals, and superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States.

(g1) Payment During Military Duty. — The State Board of Education shall adopt rules relating to leaves of absence, without loss of pay or time, for periods of military training and for State or federal military duty or for special emergency management service. The rules shall apply to all public school employees, including, but not limited to, school teachers, administrators, guidance counselors, speech language pathologists, nurses, and custodians employed by local boards of education or by charter schools. The rules shall provide that (i) the State pays any salary differential to all public school employees in State-funded positions, (ii) the employing local board of education pays any pay differential to all public school employees in locally funded positions, (iii) the employing charter school pays any pay differential to all public school employees in the charter school, and (iv) the employing local board of education pays the local supplement.

(h) Teachers Paid From Other Funds. — Every local board of education may adopt, as to teachers not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system. If a local board of education does not adopt a local salary schedule, the State salary schedule shall apply. No teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the board of education a higher salary is allowed for special fitness, special duties, or under extraordinary circumstances.

When a higher salary is allowed, the minutes of the board shall show what salary is allowed and the reason. A board of education may authorize the superintendent to supplement the salaries of all teachers from local funds, and the minutes of the board shall show what increase is allowed each teacher.

(i) Longevity Pay. — Longevity pay shall be based on the annual salary on the employee's anniversary date.

(j) Parental Leave. — A teacher may use annual leave, personal leave, or leave without pay to care for a newborn child or for a child placed with the teacher for adoption or foster care. A teacher may also use up to 30 days of sick leave to care for a child placed with the teacher for adoption. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless the teacher and local board of education agree otherwise. (1997-443, s. 8.38(e); 1999-237, s. 28.26(a), (b); 2002-126, s. 7.11(a); 2002-159, s. 37.5(a); 2003-301, s. 1; 2004-124, s. 7.20; 2004-180, s. 2; 2007-378, s. 1; 2008-107, s. 26.21(a); 2008-187, s. 45.5; 2008-209, ss. 1(a), 2.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above, as amended by Session Laws 2008-107, s. 26.21, as amended by Session Laws 2008-209, s. 2, and as amended further by Session Laws 2008-187, s. 45.5, is effective until June 30, 2009. The second version of subsection (d), set out above as amended by Session Laws 2008-209, s. 1(a), is effective July 1, 2009.

Editor's Note. —

Session Laws 2008-209, s. 1(b), provided that subsection 1(a) of that act, which amended subsection (d) of this section, would become effective July 1, 2009, if House Bill 2436, 2007 Regular Session, became law. House Bill 2436, 2007 Regular Session, was enacted as Session Laws 2008-107.

Session Laws 2008-209, s. 2, as amended by Session Laws 2008-187, s. 45.5, provided that the amendments by those acts would become effective if House Bill 2436, 2007 Regular Session [Session Laws 2008-107] became law, which it did. In addition, the amendment by Session Laws 2008-187, s. 45.5, was contingent upon House Bill 15, 2007 Regular Session [Session Laws 2008-209] becoming law.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 26.21(a), as amended by Session Laws 2008-209, s. 2, and as amended by Session Laws 2008-187, s. 45.5, effective July 1, 2008, and expiring June 30, 2009, rewrote the last sentence of the second paragraph of subsection (d).

Session Laws 2008-209, s. 1(a), effective July 1, 2009, added "except for teachers using personal leave on non-protected teacher workdays. Teachers using personal leave on non-protected teacher workdays shall receive full salary" to the end of the second paragraph of subsection (d).

Article 21A.

Privacy of Employee Personnel Records.

§ 115C-321. Confidential information in personnel files; access to information.

(a) All information contained in a personnel file, except as otherwise provided in this Chapter, is confidential and shall not be open for inspection and examination except to any of the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment.
(2) The superintendent and other supervisory personnel.
(3) Members of the local board of education and the board's attorney.
(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file.

(a1) Notwithstanding any other provision of this Chapter, information contained in a personnel file that is relevant to possible criminal misconduct may be made available to law enforcement and the district attorney to assist in the investigation of:

(1) A report made to law enforcement pursuant to G.S. 115C-288(g), or
(2) Any report to law enforcement regarding an arson, attempted arson, destruction of, theft from, theft of, embezzlement from, embezzlement of any personal or real property owned by the local board of education.

(a2) The employee shall be given five working days prior written notice of any disclosure under subsection (a1) of this section to permit the employee to apply to the district court for an in camera review prior to the date of disclosure to determine if the information is relevant to the possible criminal misconduct. Failure of the employee to apply for a review shall constitute a waiver by the employee of any relief under this subsection.

(a3) Statements or admissions made by the employee and produced under subsection (a1) of this section shall not be admissible in any subsequent criminal proceeding against the employee.

(b) Notwithstanding any other provision of this Chapter, any superintendent may, in his discretion, or shall at the direction of the Board of Education, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the local board of education or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the superintendent shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the superintendent and shall be a public record.

(b1) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former public school employees to domiciled, nonprofit organizations representing 10,000 or more retired State government, local government, or public school employees.

(c) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not in excess of five hundred dollars ($500.00).

(d) Any person, not specifically authorized by this section to have access to a personnel file, who shall knowingly and willfully examine in its official filing place, remove, or copy any portion of a personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined not in excess of five hundred dollars ($500.00). (1987, c. 571, s. 1; 2005-321, s. 1; 2007-192, s. 1; 2008-194, s. 11(b).)

Effect of Amendments. — Session Laws 2008-194, s. 11(b), effective August 8, 2008, added subsection (b1).

ARTICLE 22.

General Regulations.

Part 3. Principal and Teacher Employment Contracts.

§ 115C-325. System of employment for public school teachers.

CASE NOTES

VII. Judicial Review.

VII. JUDICIAL REVIEW.

Statute of Limitations. — Teacher's claim for declaratory judgment under G.S. 115C-325(c)(2) was time-barred by the three year statute of limitations under G.S. 1-52(2), as the teacher did not timely file his claim and the continuing wrong doctrine did not apply. Because the teacher had obtained career status in a public school system, under G.S. 115C-325(c)(2), the board of education was required to vote on his career status by 15 June 2001; however, the teacher did not file his complaint until 15 June 2005. Hicks v. Wake County Bd. of Educ., — N.C. App. —, 653 S.E.2d 236, 2007 N.C. App. LEXIS 2422 (2007).

Part 6. Criminal History Checks.

§ 115C-332.1. Sex offender registries checks for certain contractual personnel.

(a) For purposes of this section, the term "contractual personnel" includes any individual or entity under contract with the local board of education whose contractual job involves direct interaction with students as part of the job. For purposes of this section, the term "contractual personnel" does not include any person covered under G.S. 115C-332.

(b) Each local board of education shall require, as a term of any contract the local board of education enters, that employers of a person who is contractual personnel conduct an annual check of that person on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. As a term of any contract, a local board of education shall prohibit any contractual personnel listed on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry from having direct interaction with students. (2008-117, s. 21.)

Editor's Note. — Session Laws 2008-117, s. 22, made this section effective December 1, 2008, and applicable to offenses committed on or after that date.

Session Laws 2008-117, s. 21.1 is a severability clause.

SUBCHAPTER VI. STUDENTS.

ARTICLE 25.

Admission and Assignment of Students.

§ 115C-366. Assignment of student to a particular school.

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents are considered legal residents of the local school administrative unit in which the institution is located. These children are eligible for admission to the public schools of the local school administrative unit as provided in this section.

(a2) It is the policy of the State that every child of a homeless individual and every homeless child and youth has access to a free, appropriate public education. The State Board of Education and every local board of education shall ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001. A local board of education shall not charge a homeless child or youth tuition for enrollment. An unaccompanied youth or a homeless child's or youth's parent, guardian, or legal custodian may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the homeless child or youth, and this determination shall be binding on the local board of education, subject to judicial review.

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result of any one of the following:
  a. The death, serious illness, or incarceration of a parent or legal guardian,
  b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,
  c. Abuse or neglect by the parent or legal guardian,
  d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student,
  e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health,
  f. The loss or uninhabitability of the student's home as the result of a natural disaster, or
  g. The parent or legal guardian is one of the following:
    (1) On active military duty and is deployed out of the local school administrative unit in which the student resides;
    (2) A member or veteran of the uniformed services who is severely injured and medically discharged or retired, but only for a period of one year after the medical discharge or retirement of the parent or guardian; or
    (3) A member of the uniformed services who dies on active duty or as a result of injuries sustained on active duty, but only for a period of one year after death.

    For purposes of this sub-subdivision, the term "active duty" does not include periods of active duty for training for less than 30 days. Assignment under this sub-subdivision is only available if some evidence of the deployment is tendered with the affidavits required under subdivision (3) of this subsection.

(2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative unit.

(3) The caregiver adult and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:

a. Confirm the qualifications set out in this subsection establishing the student's residency,
b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and
c. Attest that the caregiver adult has been given and accepts responsibility for educational decisions for the student.

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the caregiver adult shall attest to that fact in the affidavit. If the student is a minor, the caregiver adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

Upon receipt of both affidavits or an affidavit from the caregiver adult that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or legal custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment under this Article as long as the address is kept confidential from the public under Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

(1) Abused or neglected. — A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect, and that definition also shall apply to this section.

(2) Caregiver adult. — The adult with whom the child resides. For children placed or assigned in a licensed facility, a caregiver adult also may be the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.

(3) Educational decisions. — Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other decisions or actions recommended or required by the school in connection to that student.

(4) Facility. — A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).

(5) Homeless. — Individuals who lack a fixed, regular, and adequate nighttime residence or are included in the definition of homeless children and youths in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(6) Legal custodian. — The person or agency that has been awarded legal custody of the student by a court.

(7) Licensed facility. — A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.

(8) McKinney-Vento Homeless Education Assistance Improvements Act of 2001. — 20 U.S.C. § 11431, et seq., as amended, and federal regulations adopted under this act.

(9) Program participant. — An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes.

(10) Unaccompanied youth. — Youths who are not in the physical custody of a parent or guardian as defined in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. (1955, c. 366, s. 1; c. 1372, art. 19, s. 3; 1956, Ex. Sess., c. 7, s. 1; 1971, c. 153; 1981, c. 423, s. 1; c. 567, s. 1; 1991, c. 407, s. 1; c. 719, s. 2; 1997-271, s. 1; 1997-443, s. 8.29(d); 2002-171, s. 5; 2006-65, s. 1; 2007-283, s. 1; 2008-185, s. 2; 2008-187, s. 19.)

Editor's Note. — The bracketed "[or]" was inserted at the end of subdivision (a3)(1)f at the direction of the Revisor of Statutes. The amendments to this section by Session Laws 2008-187, s. 19, corrected the oversight, and the bracketed language has been removed.

Effect of Amendments. —

Session Laws 2008-185, s. 2, effective August 7, 2008, rewrote subdivision (a3)(1)g.

Session Laws 2008-187, s. 19, effective August 7, 2008, made minor stylistic changes to subdivision (a3)(1)e and (a3)(1)f.

CASE NOTES

Out-of-County Students. — Judgment for a school board in a suit seeking to strike down the school board's policy of charging "out-of-county" students tuition to attend its schools was proper because a special school district formed by a prior agreement was abolished by former G.S. 115-352, and no new school district was properly formed later; the parents and the students offered no proof of a later agreement nor of approval by the state board of education of any such agreement, and did not show there was a payment of a pro rata share of public school money, as required by the statute if such a school district was officially formed. The school board thus had the authority to charge the contested tuition. Brown v. Chatham County Bd. of Educ., — N.C. App. —, 652 S.E.2d 737, 2007 N.C. App. LEXIS 2366 (2007).

Tuition for "Out-of-County" Students Not Improper. — Judgment for a school board in a suit seeking to strike down the school board's policy of charging "out-of-county" students tuition to attend its schools was proper because a special school district formed by a prior agreement was abolished by G.S. 115-352, and no new school district was properly formed later; therefore, the school board had the authority to charge the contested tuition to the "out-of-county" students. Brown v. Chatham County Bd. of Educ., — N.C. App. —, 652 S.E.2d 737, 2007 N.C. App. LEXIS 2366 (2007).

Final Decision Subject Only to Application for Reassignment. — No authority existed to support a trial court's requirement of informed parental consent prior to a board of education's assignment of student to year-round schools. Under G.S. 115C-366(b), when a local school board exercised its "full and complete" authority to assign a student to a year-round school, that decision was "final" subject only to an application by the student under G.S. 115C-369 for reassignment. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

§ 115C-366.1. Local boards of education; tuition charges.

CASE NOTES

Tuition for "Out-of-County" Students Not Improper. — Judgment for a school board in a suit seeking to strike down the school board's policy of charging "out-of-county" students tuition to attend its schools was proper because a special school district formed by a prior agreement was abolished by G.S. 115-352, and no new school district was properly formed later; therefore, the school board had the authority to charge the contested tuition to the "out-of-county" students. Brown v. Chatham County Bd. of Educ., — N.C. App. —, 652 S.E.2d 737, 2007 N.C. App. LEXIS 2366 (2007).

Out-of-County Students. — Judgment for a school board in a suit seeking to strike down the school board's policy of charging "out-of-county" students tuition to attend its schools was proper because a special school district formed by a prior agreement was abolished by former G.S. 115-352, and no new school district was properly formed later; the parents and the students offered no proof of a later agreement nor of approval by the state board of education of any such agreement, and did not show there was a payment of a pro rata share of public school money, as required by the statute if such a school district was officially formed. The school board thus had the authority to charge the contested tuition. Brown v. Chatham County Bd. of Educ., — N.C. App. —, 652 S.E.2d 737, 2007 N.C. App. LEXIS 2366 (2007).

§ 115C-367. Assignment on certain bases prohibited.

CASE NOTES

Applied in Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

§ 115C-369. Application for reassignment; notice of disapproval; hearing before board.

CASE NOTES

Section Does Not Apply to Board's Rules on School Calendar. — G.S. 115C-369 provides no means for determining whether a board of education's plan for mandatory year-round schools is statutorily or constitutionally permitted. The statute focuses on the individual assignment of a student and would not supply the relief sought in a declaratory judgment complaint regarding the board's plan and regulations. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

After Assignment by School Board, Application Required for Reassignment. — No authority existed to support a trial court's requirement of informed parental consent prior to a board of education's assignment of student to year-round schools. Under G.S.115C-366(b), when a local school board exercised its "full and complete" authority to assign a student to a year-round school, that decision was "final" subject only to an application by the student under G.S. 115C-369 for reassignment. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Exhaustion of Administrative Remedies Not Required. — Claims for declaratory relief under G.S. 1-254 made by parents of students were not barred for failure to exhaust administrative remedies because the parents challenged the validity of a Board of Education's plan to use year-round schools to alleviate overcrowding, which did not fall within the scope of G.S. 115C-369. None of the factors specified in G.S. 115C-369(c) for consideration by the Board in making a decision under the statute addressed the issues regarding the validity of the plan. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Parent's Actions Not Moot on Issue of School Calendar. — Because children's individual reassignments to mandatory year round schools did not terminate the uncertainty and controversy giving rise to their action under G.S. 115C-369 as would a declaration that the Board of Education did or did not have the authority to implement its plan to convert traditional calendar schools to mandatory year round schools, the claims alleged by the parents of those children were not moot. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Article 27.

Discipline.

§ 115C-391. Corporal punishment, suspension, or expulsion of pupils.

(a) Local boards of education shall adopt policies not inconsistent with the provisions of the Constitutions of the United States and North Carolina, governing the conduct of students and establishing procedures to be followed by school officials in suspending or expelling any student, or in disciplining any student if the offensive behavior could result in suspension, expulsion, or the administration of corporal punishment. Local boards of education shall include a reasonable dress code for students in these policies.

The policies that shall be adopted for the administration of corporal punishment shall include at a minimum the following conditions:

(1) Corporal punishment shall not be administered in a classroom with other children present;

(2) The student body shall be informed beforehand what general types of misconduct could result in corporal punishment;

(3) Only a teacher, substitute teacher, principal, or assistant principal may administer corporal punishment and may do so only in the presence of a principal, assistant principal, teacher, substitute teacher, teacher assistant, or student teacher, who shall be informed

beforehand and in the student's presence of the reason for the punishment; and

(4) An appropriate school official shall provide the child's parent or guardian with notification that corporal punishment has been administered, and upon request, the official who administered the corporal punishment shall provide the child's parent or guardian a written explanation of the reasons and the name of the second school official who was present.

Each local board shall publish all the policies mandated by this subsection and make them available to each student and his parent or guardian at the beginning of each school year. Notwithstanding any policy adopted pursuant to this section, school personnel may use reasonable force, including corporal punishment, to control behavior or to remove a person from the scene in those situations when necessary:

(1) To quell a disturbance threatening injury to others;
(2) To obtain possession of weapons or other dangerous objects on the person, or within the control, of a student;
(3) For self-defense;
(4) For the protection of persons or property; or
(5) To maintain order on school property, in the classroom, or at a school-related activity on or off school property.

(b) The principal of a school, or his or her delegate, shall have authority to suspend for a period of 10 days or less any student who willfully violates policies of conduct established by the local board of education. When a student is suspended under this subsection for a period of 10 days or less, the principal, or his or her delegate, shall give notice to the student's parent or guardian of the student's suspension and the student's rights under this subsection. The notice shall be given by telephone, telefax, e-mail, or any other method reasonably designed to achieve actual notice. A student suspended under this subsection shall be provided all of the following:

(1) The opportunity to take textbooks home for the duration of the suspension.
(2) The right to inquire about homework assignments for the duration of the suspension.
(3) The opportunity to take any quarterly, semester, or grading period examinations missed during the suspension period.

(c) The principal of a school, with the prior approval of the superintendent, shall have the authority to suspend for periods of times in excess of 10 school days but not exceeding the time remaining in the school year, any pupil who willfully violates the policies of conduct established by the local board of education. The pupil or his parents may appeal the decision of the principal to the local board of education.

(d) Notwithstanding G.S. 115C-378:

(1) A local board of education may, upon recommendation of the principal and superintendent, expel any student 14 years of age or older whose behavior indicates that the student's continued presence in school constitutes a clear threat to the safety of other students or employees. The local board of education's decision to expel a student under this section shall be based on clear and convincing evidence. Prior to ordering the expulsion of a student pursuant to this subdivision, the local board of education shall consider whether there is an alternative program offered by the local school administrative unit that may provide education services for the student who is subject to expulsion. At any time after the first July 1 that is at least six months after the board's decision to expel a student under this subsection, a student may request the local board of education to reconsider that decision. If

the student demonstrates to the satisfaction of the local board of education that the student's presence in school no longer constitutes a threat to the safety of other students or employees, the board shall readmit the student to a school in that local school administrative unit on a date the board considers appropriate.

(2) A local board of education may expel any student subject to G.S. 14-208.18. The local board of education's decision to expel a student under this subdivision shall be based on clear and convincing evidence. Prior to ordering the expulsion of a student pursuant to this subdivision, the local board of education shall consider whether there is an alternative program that may be offered by the local school administrative unit to provide educational services. As provided by G.S. 14-208.18(f), if the local board of education determines that a student shall be provided educational services on school property, the student must be under the supervision of school personnel at all times.

(d1) A local board of education or superintendent shall suspend for 365 calendar days any student who:

(1) Brings onto educational property or to a school-sponsored curricular or extracurricular activity off educational property, or

(2) Possesses on educational property or at a school-sponsored curricular or extracurricular activity off educational property,

a weapon, as defined in G.S. 14-269.2(b), 14-269.2(b1), 14-269.2(g), and 14-269.2(h). The local board of education upon recommendation by the superintendent may modify this suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established under Article 9 of this Chapter for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended pursuant to this subsection in an alternative school setting or in another setting that provides educational and other services.

(d2)(1) The superintendent shall, upon recommendation of the principal, remove to an alternative educational setting, as provided in subdivision (4) of this subsection, any student who is at least 13 and who physically assaults and seriously injures a teacher or other school personnel. If no appropriate alternative educational setting is available, then the superintendent shall, upon recommendation of the principal, suspend for no less than 300 days but no more than 365 days any student who is at least 13 and who physically assaults and seriously injures a teacher or other school personnel.

(2) The superintendent may, upon recommendation of the principal, remove to an alternative educational setting any student who is at least 13 and who does one of the following:

a. Physically assaults a teacher or other adult who is not a student.

b. Physically assaults another student if the assault is witnessed by school personnel.

c. Physically assaults and seriously injures another student.

If no appropriate alternative educational setting is available, then the superintendent may, upon recommendation of the principal, suspend this student for up to 365 days.

(3) For purposes of this subsection, the conduct leading to suspension or removal to an alternative educational setting must occur on school property or at a school-sponsored or school-related activity on or off school property. This subsection shall not apply when the student who is subject to suspension or removal was acting in self-defense. If a teacher is assaulted or injured and as a result a student is suspended or removed to an alternative educational setting under this subsec-

tion, then the student shall not be returned to that teacher's classroom unless the teacher consents. If a student is suspended under this subsection, the board may assign the student to an alternative educational setting upon the expiration of the period of suspension.

(4) If the superintendent removes the student to an alternative educational setting, as provided in subdivision (1) of this subsection, and the conduct leading to the removal occurred on or before the ninetieth school day, the board shall remove the student to that setting for the remainder of the current school year and the first 90 school days in the following school year. If the superintendent chooses to remove the student to an alternative educational setting, as provided in subdivision (1) of this subsection, and the conduct leading to the removal occurred after the ninetieth school day, the board shall remove the student to that setting for the remainder of the current school year and for the entire subsequent school year. Notwithstanding these requirements, the superintendent may authorize a shorter or longer length of time a student must remain in an alternative educational setting if the superintendent finds this would be more appropriate based upon the recommendations of the principals of the alternative school and the school to which the student will return.

(d3) A local board of education or superintendent shall suspend for 365 calendar days any student who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device designed to destroy or damage property by explosion, blasting, or burning, or who, with intent to perpetrate a hoax, conceals, places, or displays any device, machine, instrument, or artifact on educational property or at a school-sponsored curricular or extracurricular activity off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property. The local board upon recommendation by the superintendent may modify either suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established under Article 9 of this Chapter for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended under this subsection in an alternative school setting or in another setting that provides educational and other services. For purposes of this subsection and subsection (d1) of this section, the term "educational property" has the same definition as in G.S. 14-269.2(a)(1).

(d4) A local board of education or superintendent may suspend for up to 365 days any student who:

(1) By any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device, substance, or material designed to cause harmful or life-threatening illness or injury to another person;

(2) With intent to perpetrate a hoax, conceals, places, disseminates, or displays on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device, machine, instrument, artifact, letter, package, material, or substance, so as to cause any person reasonably to believe the same to be a substance or material capable of causing harmful or life-threatening illness or injury to another person;

(3) Threatens to commit on educational property or at a school-sponsored curricular or extracurricular activity off educational property an act of

terror that is likely to cause serious injury or death, when that threat is intended to cause a significant disruption to the instructional day or a school-sponsored activity or causes that disruption;

(4) Makes a report, knowing or having reason to know the report is false, that there is about to occur or is occurring on educational property or at a school-sponsored curricular or extracurricular activity off educational property an act of terror that is likely to cause serious injury or death, when that report is intended to cause a significant disruption to the instructional day or a school-sponsored activity or causes that disruption; or

(5) Conspires to commit any of the acts described in this subsection.

(d5) When a student is expelled or suspended for more than 10 days, the local board shall give notice to the student's parent or guardian by certified mail, telephone, telefax, e-mail, or any other method reasonably designed to achieve actual notice of the student's rights under this section. If English is the second language of the parent or guardian, the notice shall be written in the parent or guardian's first language when the appropriate foreign language resources are readily available and in English, and both versions shall be in plain language and shall be easily understandable.

(e) A decision of a superintendent under subsection (c), (d1), (d2), (d3), or (d4) of this section may be appealed to the local board of education. A decision of the local board upon this appeal or of the local board under subsection (d) or (d1) of this section is final and, except as provided in this subsection, is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. A person seeking judicial review shall file a petition in the superior court of the county where the local board made its decision.

(f) Local boards of education shall ensure they have clear policies governing the conduct of students. At a minimum, these policies shall state the consequences of violent or assaultive behavior, possessions of weapons, and criminal acts committed on school property or at school-sponsored functions. These policies shall provide that when notice is given to students or parents of a suspension of more than 10 days or expulsion, this notice shall identify what information will be included in the student's official record and the procedure for expungement of this information under G.S. 115C-402. The State Board shall develop guidelines to assist local boards in this process.

(g) Notwithstanding the provisions of this section, the policies and procedures for the discipline of students with disabilities shall be consistent with Article 9 of this Chapter and with federal laws and regulations.

(h) Notwithstanding any other law, no officer or employee of the State Board of Education or of a local board of education shall be civilly liable for using reasonable force, including corporal punishment, in conformity with State law, State or local rules, or State or local policies regarding the control, discipline, suspension, and expulsion of students. Furthermore, the burden of proof is on the claimant to show that the amount of force used was not reasonable. (1955, c. 1372, art. 17, s. 5; 1959, c. 573, s. 12; 1963, c. 1223, s. 5; 1965, c. 584, s. 14; 1971, c. 1158; 1979, c. 874, s. 1; 1981, c. 423, s. 1; 1987, c. 572, ss. 1, 2; c. 827, s. 52; 1989, c. 585, s. 7; 1993, c. 509, s. 4; 1995, c. 293, ss. 1, 2; c. 386, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 21; 1997-443, s. 8.29(q)(1); 1998-220, ss. 7-9; 1999-257, ss. 6-8; 1999-387, ss. 1-3; 2001-195, s. 2; 2001-244, s. 1; 2001-363, s. 2(c); 2001-487, s. 75; 2001-500, ss. 4, 5, 6.1; 2006-69, s. 3(*l*); 2007-466, ss. 1, 2; 2008-117, s. 12.1.)

Editor's Note. —
Session Laws 2008-117, s. 21.1 is a severability clause.

Effect of Amendments. —
Session Laws 2008-117, s. 12.1, effective December 1, 2008, and applicable to offenses com-

mitted on or after that date, redesignated the previously exisiting provisions of subsection (d) as subsection (d) and subdivision (d)(1), made minor stylistic changes and substituted "subdivision" for "subsection" near the middle of subdivision (d)(1); and added subdivision (d)(2).

ARTICLE 29B.

Interstate Compact on Educational Opportunity for Military Children.

§ 115C-407.5. Interstate Compact on Educational Opportunity for Military Children.

The Interstate Compact on Educational Opportunity for Military Children is hereby enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I.
PURPOSE.

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district(s) or variations in entrance/age requirements.

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment.

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

D. Facilitating the on-time graduation of children of military families.

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

F. Providing for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

G. Promoting coordination between this compact and other compacts affecting military children.

H. Promoting flexibility and cooperation between the educational system, parents and the student in order to achieve educational success for the student.

ARTICLE II.
DEFINITIONS.

As used in this compact, unless the context clearly requires a different construction:

A. "Active duty" means: full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. § 12301, et. seq. and 10 U.S.C. § 12401, et. seq.

B. "Children of military families" means: a school-aged child(ren), enrolled in Kindergarten through Twelfth (12th) grade, in the household of an active duty member.

C. "Compact commissioner" means: the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

D. "Deployment" means: the period one (1) month prior to the service members' departure from their home station on military orders though six (6) months after return to their home station.

E. "Education(al) records" means: those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

F. "Extracurricular activities" means: a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. "Interstate Commission on Educational Opportunity for Military Children" means: the commission that is created under Article IX of this compact, which is generally referred to as Interstate Commission.

H. "Local education agency" means: a public authority legally constituted by the state as an administrative agency to provide control of and direction for Kindergarten through Twelfth (12th) grade public educational institutions.

I. "Member state" means: a state that has enacted this compact.

J. "Military installation" means: a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. "Non-member state" means: a state that has not enacted this compact.

L. "Receiving state" means: the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. "Rule" means: a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of rules promulgated under the Administrative Procedures Act as found in Chapter 150B of the North Carolina General Statutes, and includes the amendment, repeal, or suspension of an existing rule.

N. "Sending state" means: the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. "State" means: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory.

P. "Student" means: the child of a military family for whom the local education agency receives public funding and who is formally enrolled in Kindergarten through Twelfth (12th) grade.

Q. "Transition" means: 1) the formal and physical process of transferring from school to school or 2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. "Uniformed service(s)" means: the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

S. "Veteran" means: a person who served in the uniformed services and who was discharged or released there from under conditions other than dishonorable.

ARTICLE III.
APPLICABILITY.

A. Except as otherwise provided in Section B, this compact shall apply to the children of:

1. active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. § 12301, et. seq. and 10 U.S.C. § 12401, et. seq.;
2. members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one (1) year after medical discharge or retirement; and
3. members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

1. inactive members of the national guard and military reserves;
2. members of the uniformed services now retired, except as provided in Section A;
3. veterans of the uniformed services, except as provided in Section A; and other U.S. Dept. of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV.
EDUCATIONAL RECORDS & ENROLLMENT.

A. Unofficial or "hand-carried" education records — In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official education records/transcripts — Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten (10) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

C. Immunizations — Compacting states shall give thirty (30) days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunization(s) required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty (30) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

D. Kindergarten and First grade entrance age — Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level (including Kindergarten) from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

ARTICLE V.
PLACEMENT & ATTENDANCE.

A. Course placement — When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course(s).

B. Educational program placement — The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include, but are not limited to: 1) gifted and talented programs; and 2) English as a second language (ESL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services — 1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on his/her current Individualized Education Program (IEP); and 2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility — Local education agency administrative officials shall have flexibility in waiving course/program prerequisites, or other preconditions for placement in courses/programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities — A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI.
ELIGIBILITY.

A. Eligibility for enrollment — Children of military families shall be eligible for enrollment in the public schools of North Carolina pursuant to the provisions of G.S. 115C-366, including the provisions of G.S. 115C-366(a3) that provides for admission, without the payment of tuition, of children of military families not domiciled within the school district, provided that the affidavits provided for in that section and other specified conditions are met.

B. Eligibility for extracurricular participation — State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

ARTICLE VII.
GRADUATION.

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

A. Waiver requirements — Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams — States shall accept: 1) exit or end-of-course exams required for graduation from the sending state; or 2) national norm-referenced achievement tests or 3) alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her Senior year, then the provisions of Article VII, Section C shall apply.

C. Transfers during Senior year — Should a military student transferring at the beginning or during his or her Senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Sections A and B of this Article.

ARTICLE VIII.
STATE COORDINATION.

A. Each member state shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own State Council, its membership must include at least: the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the State Council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the State Council.

B. The State Council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the Governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the State Council, unless either is already a full voting member of the State Council.

ARTICLE IX

INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the Interstate Commission is entitled to one vote.
2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.
3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council may delegate voting authority to another person from their state for a specified meeting.
4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

C. Consist of ex-officio, non-voting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel and other interstate compacts affecting the education of children of military members.

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

E. Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The U.S. Dept. of Defense shall serve as an ex-officio, nonvoting member of the executive committee.

F. Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;
2. Disclose matters specifically exempted from disclosure by federal and state statute;
3. Disclose trade secrets or commercial or financial information which is privileged or confidential;
4. Involve accusing a person of a crime, or formally censuring a person;
5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. Disclose investigative records compiled for law enforcement purposes; or
7. Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

H. Shall cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

I. Shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

J. Shall create a process that permits military officials, education officials and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission, any member state, or any local education agency.

ARTICLE X.
POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The Interstate Commission shall have the following powers:

A. To provide for dispute resolution among member states.

B. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules shall have the force and effect of rules promulgated under the Administrative Procedures Act as found in Chapter 150B of the North Carolina General Statutes and shall be binding in the compact states to the extent and in the manner provided in this compact.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules and actions.

D. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process. Any action to enforce compliance with the compact provisions by the Interstate Commission shall be brought against a member state only.

E. To establish and maintain offices which shall be located within one or more of the member states.

F. To purchase and maintain insurance and bonds.

G. To borrow, accept, hire or contract for services of personnel.

H. To establish and appoint committees including, but not limited to, an executive committee as required by Article IX, Section E, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

Q. To establish uniform standards for the reporting, collecting and exchanging of data.

R. To maintain corporate books and records in accordance with the bylaws.

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

T. To provide for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

ARTICLE XI
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

1. Establishing the fiscal year of the Interstate Commission;
2. Establishing an executive committee, and such other committees as may be necessary;
3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;
4. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;
5. Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;
6. Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.
7. Providing "start up" rules for initial administration of the compact.

B. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

C. Executive Committee, Officers and Personnel

1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:
    a. Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;
    b. Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and
    c. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Interstate Commission.
2. The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

D. The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.
2. The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.
3. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE XII
RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rulemaking Authority — The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

B. Rulemaking Procedure — Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative

Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

C. Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

D. If a majority of the legislatures of the compacting states rejects a Rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

ARTICLE XIII
OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

A. Oversight

1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as rules promulgated under the Administrative Procedures Act as found in Chapter 150B of the North Carolina General Statutes.
2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission.
3. The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact or promulgated rules.

B. Default, Technical Assistance, Suspension and Termination — If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default.
2. Provide remedial training and specific technical assistance regarding the default.
3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.
4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been

exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.
6. The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.
7. The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

C. Dispute Resolution

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states.
2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
2. The Interstate Commission, may by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.
3. The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XIV
FINANCING OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XV
MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten (10) of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XVI
WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute, which enacted the compact into law.
2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member jurisdiction.
3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.
4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.
5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Dissolution of Compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII
SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII
BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws
1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.
2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

B. Binding Effect of the Compact
1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.
2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.
3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state. (2008-185, s. 1.)

Editor's Note. — G.S. 115C-407.8 provides that "This Article becomes effective July 1, 2008, or upon enactment of the compact into law by nine other states, whichever date occurs later." The Revisor of Statutes has been informed that this contingency has been met, and that the Article became effective July 1, 2008.

Session Laws 2008-185, s. 3, provides: "It is the goal of the General Assembly to ensure that low-wealth schools are enabled to administer and comply with the requirements of the Interstate Compact on Educational Opportunity for Military Children. It is the intent of the General Assembly to appropriate funds in the sum of twenty-five thousand dollars ($25,000) annually to the Department of Public Instruction to offset costs for low-wealth schools for administration of the Interstate Compact on Educational Opportunity for Military Children, beginning with the 2009-2010 school year or the enactment of the compact, whichever occurs later."

§ 115C-407.6. Creation of a State Council.

The State Board of Education shall establish a State Council, as required by Article VIII of the compact. The membership of the State Council shall include, at a minimum, the Superintendent of Public Instruction, a superintendent of a local school administrative unit with a high concentration of military children, a representative from a military installation, a representative of the executive branch of government, a representative of the North Carolina School Boards Association, a representative of the North Carolina Association of School Administrators, a member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and a member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. (2008-185, s. 1.)

§ 115C-407.7. Appointment of compact commissioner.

As required by Article VIII of the compact, the Governor shall appoint as compact commissioner a licensed North Carolina attorney who represents at least one local board of education, with preference given to an attorney representing a local board of education with a high concentration of military children or an attorney familiar with military issues. The compact commissioner shall be responsible for the administration and management of the State's participation in the compact. (2008-185, s. 1.)

§ 115C-407.8. Effective date of compact.

This Article becomes effective July 1, 2008, or upon enactment of the compact into law by nine other states, whichever date occurs later. (2008-185, s. 1.)

Editor's Note. — The Revisor of Statutes has been informed that the contingency specified in this section has been met, and that the Article became effective July 1, 2008.

SUBCHAPTER VII. FISCAL AFFAIRS.

ARTICLE 31.

The School Budget and Fiscal Control Act.

Part 1. General Provisions.

§ 115C-423. Definitions.

CASE NOTES

Fund. — County board of education in a budgetary dispute with a county board of commissioners was required to present evidence of the amount of funding needed for the local current expense fund which included the funds provided from the North Carolina State Public School Fund to provide for the current operating expenses of the county schools for the fiscal year concerning the budgetary dispute. Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, — N.C. App. —, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Public school system needed to create a special fund where it sought to carry on specific activities or attain certain objectives after it received money from the county board of commissioners to operate it schools. Where it merely placed that money in the local current expense fund, such as in the case of its preschool program, it was required to apportion those funds between itself and the charter schools pursuant to G.S. 115C-238.29(H)(b). Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

Part 2. Budget.

§ 115C-426. Uniform budget format.

CASE NOTES

What Is Included in Local Current Expense Fund. —

County board of education in a budgetary dispute with a county board of commissioners was required to present evidence of the amount of funding needed for the local current expense fund which included the funds provided from the North Carolina State Public School Fund to provide for the current operating expenses of the county schools for the fiscal year concerning the budgetary dispute. Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, — N.C. App. —, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Charter School Funding. —

Public school system was required to follow the uniform budget format of G.S. 115C-426 in allocating funds for various projects after those funds were made available to the system by the county board of commissioners. Too, the system was required to appropriate those funds between itself and the charter schools where it placed funds in the local current expense fund, such as in the case of preschool program funds, or it should have placed funds in the local current expense fund, such as where the board gave it money to improve three high schools. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

§ 115C-429. Approval of budget; submission to county commissioners; commissioners' action on budget.

CASE NOTES

Apportionment of Appropriation. — Trial court should not have concluded that money that the board of commissioners gave to the public school system for a preschool program did not have to be apportioned between the system and the charter school. The money was placed in a local current expense fund, which required that the money be apportioned between the system and charter schools pursuant to G.S. 115-238.29(H)(b) and if the system did not want that result, it was obliged to create a special fund for the preschool program, which it did not do. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

Applied in Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, — N.C. App. —, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

§ 115C-431. Procedure for resolution of dispute between board of education and board of county commissioners.

CASE NOTES

Subject Matter Jurisdiction. — Superior court had jurisdiction to adjudicate a budgetary dispute between a county board of education and a board of county commissioners because the board of county commissioners was required to provide funding to the board of education and upon disagreement as to sufficient funding the board of education was authorized pursuant to G.S. 115C-431(c) to file an action against the board of county commissioners. Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, — N.C. App. —, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Mootness. — County board of commissioners filed a notice of appeal from a judgment regarding a school budget dispute that was entered in favor of a county board of education within the fiscal school year in which a budgetary dispute existed. Therefore, the appeal was pending when the fiscal year ended, and, pursuant to G.S. 115C-431(d), the appeal was not moot because the conclusion of the fiscal year did not resolve the question in controversy. Beaufort County Bd. of Educ. v. Beaufort

County Bd. of Comm'rs, — N.C. App. —, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Necessary Parties. — State of North Carolina and the North Carolina Board of Education were not necessary parties to an action regarding a school budgetary dispute brought by a county board of education against a county board of commissioners pursuant to G.S. 115C-431(c). Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, — N.C. App. —, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Trial court did not abuse its discretion or err by its denial of a county board of commissioner's motion to continue an action brought by a county board of education to resolve a budgetary dispute because of the specific timing provisions and purposes of the North Carolina School Budget and Fiscal Control Act, N.C. Gen. Stat. ch. 115C, art. 31. Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, — N.C. App. —, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Cited in Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

§ 115C-433. Amendments to the budget resolution; budget transfers.

CASE NOTES

Cited in Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

Part 3. Fiscal Control.

§ 115C-437. Allocation of revenues to the local school administrative unit by the county.

CASE NOTES

Cited in Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

SUBCHAPTER VIII. LOCAL TAX ELECTIONS.

Article 36.

Voted Tax Supplements for School Purposes.

§ 115C-501. Purposes for which elections may be called.

CASE NOTES

Cited in Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, — N.C. App. —, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

§ 115C-511. Levy and collection of taxes.

CASE NOTES

Cited in Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, — N.C. App. —, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

SUBCHAPTER IX. PROPERTY.

Article 38A.

Public School Building Capital Fund.

§ 115C-546.2. Allocations from the Fund; uses; expenditures; reversion to General Fund; matching requirements.

(a) Of the monies credited to the Fund by the Secretary of Revenue pursuant to G.S. 115C-546.1(b), the State Board of Education may allocate up to one million dollars ($1,000,000) each year to the Department of Public Instruction. These funds shall be used by the Plant Operation Section of the School Support Division to assist each local school administrative unit with effective energy and environmental management, effective water management, hazardous material management, clean air quality, and engineering support for safe, effective environmental practices. The remainder of the monies in the Fund shall be allocated to the counties on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education. Interest earned on funds allocated to each county shall be allocated to that county.

The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee by April 15 of each year on the effectiveness of the program in accomplishing its purpose and on any other information requested by the Committee.

(b) Counties shall use monies in the Fund for capital outlay projects including the planning, construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings and for the purchase of land for public school buildings; for equipment to implement a local school technology plan that is approved pursuant to G.S. 115C-102.6C; or for both. Monies used to implement a local school technology plan shall be transferred to the State School Technology Fund and allocated by that Fund to the local school administrative unit for equipment.

As used in this section, "public school buildings" only includes facilities for individual schools that are used for instructional and related purposes and does not include centralized administration, maintenance, or other facilities.

In the event a county finds that it does not need all or part of the funds allocated to it for capital outlay projects including the planning, construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings, for the purchase of land for public school buildings, or for equipment to implement a local school technology plan, the unneeded funds allocated to that county may be used to retire any indebtedness incurred by the county for public school facilities.

In the event a county finds that its public school building needs and its school technology needs can be met in a more timely fashion through the allocation of financial resources previously allocated for purposes other than school building needs or school technology needs and not restricted for use in meeting public school building needs or school technology needs, the county commissioners may, with the concurrence of the affected local Board of Education, use those financial resources to meet school building needs and school technology needs and may allocate the funds it receives under this Article for purposes other than school building needs or school technology needs to the extent that financial resources were redirected from such purposes. The concurrence described herein shall be secured in advance of the allocation of the previously unrestricted financial resources and shall be on a form prescribed by the Local Government Commission.

(c) Monies in the Fund allocated for capital projects shall be matched on the basis of one dollar of local funds for every three dollars of State funds. Monies in the Fund transferred to the State Technology Fund do not require a local match.

Revenue received from local sales and use taxes that is restricted for public school capital outlay purposes pursuant to G.S. 105-502 or G.S. 105-487 may be used to meet the local matching requirement. Funds expended by a county after July 1, 1986, for land acquisition, engineering fees, architectural fees, or other directly related costs for a public school building capital project that was not completed prior to July 1, 1987, may be used to meet the local match requirement.

(d) Monies transferred into the Fund in accordance with Chapter 18C of the General Statutes shall be allocated for capital projects for school construction projects as follows:

(1) A sum equal to sixty-five percent (65%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education.

(2) A sum equal to thirty-five percent (35%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated to those local school administrative units located in whole or part in counties in which the effective county tax rate as a percentage of the State average effective tax rate is greater than one hundred percent (100%), with the following definitions applying to this subdivision:

   a. “Effective county tax rate” means the actual county rate for the previous fiscal year, including any countywide supplemental taxes levied for the benefit of public schools, multiplied by a three-year weighted average of the most recent annual sales assessment ratio studies.

   b. “State average effective tax rate” means the average effective county tax rates for all counties.

   c. “Sales assessment ratio studies” means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(3) No county shall have to provide matching funds required under subsection (c) of this section.

(4) A county may use monies in this Fund to pay for school construction projects in local school administrative units and to retire indebtedness incurred for school construction projects incurred on or after January 1, 2003.

(5) A county may not use monies in this Fund to pay for school technology needs. (1987, c. 622, s. 12; c. 813, ss. 18.1, 19.1, 21; 1991 (Reg. Sess., 1992), c. 1030, s. 30; 1997-221, s. 27; 2005-276, s. 31.1(hh); 2005-344, s. 15.2; 2006-66, s. 7.15; 2006-259, s. 8(i); 2008-107, s. 7.18(a), (b).)

Editor's Note. —

Session Laws 2008-107, s. 7.18(b), effective July 1, 2008, was codified as the second paragraph of subsection (a) of this section at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 1.2, provides: “This act shall be known as ‘The Current Operations and Capital Improvements Appropriations Act of 2008’.”

Session Laws 2008-107, s. 30.3, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year.”

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 7.18(a), effective July 1, 2008, in subsection (a), inserted the first two sentences and substituted "The remainder of the monies in" for "Monies" in the third sentence.

Chapter 115D.

Community Colleges.

Article 1.

General Provisions for State Administration.

Sec.
115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.
115D-5.1. Workforce Development Programs.

Article 2.

Local Administration.

Sec.
115D-20. Powers and duties of trustees.
115D-20.1. Policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events.

Article 2A.

Privacy of Employee Personnel Records.

115D-29. Confidential information in personnel files; access to information.

ARTICLE 1.

General Provisions for State Administration.

§ 115D-1. Statement of purpose.

Editor's Note. —

Session Laws 2007-323, ss. 8.5(a)-(g), as amended by Session Laws 2008-107, s. 26.11A, provides: “(a) It is the intent of the General Assembly to establish a community college faculty salary plan that (i) provides accountability to the General Assembly, (ii) maintains local flexibility and autonomy for the community colleges, and (iii) ensures that community college faculty members have a uniform minimum salary based on level of education, equivalent applicable experience, or both.

“(b) The minimum salaries for community college faculty shall be based on the following education levels:

“(1) Vocational Diploma/Certificate or Less. — This education level includes faculty members who are high school graduates, have vocational diplomas, or have completed one year of college.

“(2) Associate Degree or Equivalent. — This education level includes faculty members who have an associate degree or have completed two or more years of college but have no degree.

“(3) Bachelor's Degree.

“(4) Master's Degree or Education Specialist.

“(5) Doctoral Degree.

“(c) For the 2007-2008 school year, the minimum salaries for nine-month, full-time, curriculum community college faculty shall be as follows:

“Education Level	Minimum Salary
“Vocational Diploma/Certificate or Less	$33,314
“Associate Degree or Equivalent	$33,805
“Bachelor's Degree	$35,931
“Master's Degree or Education Specialist	$37,817
“Doctoral Degree	$40,537.

“No full-time faculty member shall earn less than the minimum salary for his or her education level.

“The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members.

“(d)(1) It is the intent of the General Assembly to encourage community colleges to make faculty salaries a priority and to reward colleges that have taken steps to achieve the national average, therefore:

“a. If the average faculty salary at a community college is one hundred percent (100%) or more of the national average community college faculty salary, the college may transfer up to eight percent (8%) of the State funds allocated to it for faculty salaries.

“b. If the average faculty salary at a community college is at least ninety-five percent (95%) but less than one hundred percent (100%) of the national average community college faculty salary, the college may transfer up to six percent

(6%) of the State funds allocated to it for faculty salaries.

"c. If the average faculty salary at a community college is at least ninety percent (90%) but less than ninety-five percent (95%) of the national average community college faculty salary, the college may transfer up to five percent (5%) of the State funds allocated to it for faculty salaries.

"d. If the average faculty salary at a community college is at least eighty-five percent (85%) but less than ninety percent (90%) of the national average community college faculty salary, the college may transfer up to three percent (3%) of the State funds allocated to it for faculty salaries.

"e. If the average faculty salary at a community college is eighty-five percent (85%) or less of the national average community college faculty salary, the college may transfer up to two percent (2%) of the State funds allocated to it for faculty salaries.

"Except as provided by subdivision (2) of this subsection, a community college shall not transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by this subsection.

"(2) With the approval of the State Board of Community Colleges, a community college at which the average faculty salary is eighty-five percent (85%) or less of the national average may transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by sub-subdivision e. of subdivision (1) of this subsection. The State Board shall approve the transfer only for purposes that directly affect student services.

"The State Board of Community Colleges shall adopt guidelines to implement the provisions of this subdivision.

"(3) A local community college may use all State funds allocated to it except for Literacy Funds and Funds for New and Expanding Industries to increase faculty salaries.

"(e) As used in this section:

"(1) 'Average faculty salary at a community college' means the total nine-month salary from all sources of all nine-month, full-time, curriculum faculty at the college, as determined by the North Carolina Community College System on October 1 of each year.

"(2) 'National average community college faculty salary' means the nine-month, full-time, curriculum salary average, as published by the Integrated Postsecondary Education Data System (IPEDS), for the most recent year for which data are available.

"(f) The State Board of Community Colleges shall adopt guidelines to implement the provisions of this section.

"(g) The State Board of Community Colleges shall report to the appropriations subcommittees on education, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Fiscal Research Division, and the Office of State Budget and Management by December 1, 2007, and every year thereafter through December 1, 2009, on the implementation of this section."

"(h) For the 2008-2009 school year, the minimum salaries for nine-month, full-time curriculum community college faculty shall be as follows:

Education Level	Minimum Salary
Vocational Diploma/Certificate or Less	$34,314
Associate Degree or Equivalent	$34,819
Bachelors Degree	$37,009
Masters Degree or Education Specialist	$38,952
Doctoral Degree	$41,753

"No full-time faculty member shall earn less than the minimum salary for his or her education level.

"The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members."

§ 115D-1.2. Learn and Earn Online program.

Learn and Earn Online. — Session Laws 2008-107, s. 7.5, provides: "(a) Funds appropriated for Learn and Earn Online that are unexpended or unencumbered at the end of each fiscal year shall not revert, but shall remain available for expenditure.

"(b) This section becomes effective June 30, 2008."

Session Laws 2008-107, s. 8.6(a), provides: "Funds reimbursed to the Community College System for full-time equivalent (FTE) students participating in learn and earn online courses shall not revert at the end of a fiscal year, but shall remain available for expenditure up to 12 months after the close of a fiscal year."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 115D-3. Community Colleges System Office; staff.

Editor's Note. —

Session Laws 2008-107, s. 8.1(a), which expires June 30, 2009, provides: "Notwithstanding any other provision of law, and consistent with the authority established in G.S. 115D-3, the President of the North Carolina Community College System may reorganize the System Office in accordance with recommendations and plans submitted to and approved by the State Board of Community Colleges."

Session Laws 2008-107, s. 8.1(b) provides: "This section expires June 30, 2009."

Session Laws 2008-107, s. 9.7(c), provides: "The University of North Carolina and Community Colleges System Office shall report by September 1, 2008, and annually thereafter, to the Joint Legislative Education Oversight Commission, the State Board of Education, the Office of State Budget and Management, and the Fiscal Research Division of the General Assembly on the implementation of the UNC-NCCCS 2+2 E-Learning Initiative. This report shall include:

"(1) The courses and programs within the 2+2 E-Learning Initiative;

"(2) The total number of prospective teachers that have taken or are taking part in this initiative to date broken down by the current academic period and each of the previous academic periods since the program's inception;

"(3) The total number of teachers currently in the State's classrooms, by local school administrative unit, who have taken part in this initiative;

"(4) The change in the number of teachers available to schools since the program's inception;

"(5) The qualitative data from students, teachers, local school administrative unit personnel, university personnel, and community college personnel as to the impact of this initiative on our State's teaching pool; and

"(6) An explanation of the expenditures and collaborative programs between the North Carolina Community College System and The University of North Carolina, including recommendations for improvement."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.

(a) The State Board of Community Colleges may adopt and execute such policies, regulations and standards concerning the establishment, administration, and operation of institutions as the State Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Community Colleges shall establish standards and scales for salaries and allotments paid from funds administered by the State Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The State Board shall have authority with respect to individual institutions: to approve sites, capital improvement projects, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees within policies for tuition and fees established by the General Assembly; and to establish and regulate financial accounting procedures.

The State Board of Community Colleges shall require all community colleges to meet the faculty credential requirements of the Southern Association of Colleges and Schools for all community college programs.

(a1) Notwithstanding G.S. 66-58(c)(3) or any other provisions of law, the State Board of Community Colleges may adopt rules governing the expenditure of funds derived from bookstore sales by community colleges. These expenditures shall be consistent with the mission and purpose of the Community College System. Profits may be used in the support and enhancement of the bookstores, for student aid or scholarships, for expenditures of direct benefit to students, and for other similar expenditures authorized by the board of trustees, subject to rules adopted by the State Board. These funds shall not be used to supplement salaries of any personnel.

(a2) The State Board of Community Colleges shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State.

(a3) The State Board of Community Colleges shall adopt the following rules to assist community colleges in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

(1) To establish the procedures a person who is or was enrolled in a community college must follow and the requirements that person must meet to obtain a driving eligibility certificate.

(2) To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate to provide the certificate if he or she determines that one of the following requirements is met:

a. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

b. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

(3) To provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate.

(4) To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates.

The State Board shall develop a form for the appropriate individuals to provide their written, irrevocable consent for a community college to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent.

(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes, and elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR). Provided further, tuition shall be waived for senior citizens attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this section.

(c) No course of instruction shall be offered by any community college at State expense or partial State expense to any captive or co-opted group of students, as defined by the State Board of Community Colleges, without prior approval of the State Board of Community Colleges. Approval by the State Board of Community Colleges shall be presumed to constitute approval of both the course and the group served by that institution. The State Board of Community Colleges may delegate to the President the power to make an initial approval, with final approval to be made by the State Board of Community Colleges. A course taught without such approval will not yield any full-time equivalent students, as defined by the State Board of Community Colleges.

(c1) Community colleges shall report full-time equivalent (FTE) student hours for correction education programs on the basis of contact hours rather than student membership hours. No community college shall operate a multi-entry/multi-exit class or program in a prison facility, except for a literacy class or program.

The State Board shall work with the Department of Correction on offering classes and programs that match the average length of stay of an inmate in a prison facility.

(d) Recodified as G.S. 115D-5.1(a) by Session Laws 2005-276, s. 8.4(a), effective July 1, 2005.

(e) Repealed by Session Laws 1999-84, s. 3, effective May 21, 1999.

(f) A community college may not offer a new program without the approval of the State Board of Community Colleges except that approval shall not be required if the tuition for the program will fully cover the cost of the program. If at any time tuition fails to fully cover the cost of a program that falls under the exception, the program shall be discontinued unless approved by the State Board of Community Colleges. If a proposed new program would serve more than one community college, the State Board of Community Colleges shall perform a feasibility study prior to acting on the proposal.

The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, and the Joint Legislative Commission on Governmental Operations, on all new programs it approved during the year. The report shall include the specific reasons for which each program was approved.

(g) Funds appropriated to the Community Colleges System Office as operating expenses for allocation to the institutions comprising the North Carolina Community College System shall not be used to support recreation extension courses. The financing of these courses by any institution shall be on a self-supporting basis, and membership hours produced from these activities shall not be counted when computing full-time equivalent students (FTE) for use in budget-funding formulas at the State level.

(h) Whenever a community college offers real estate continuing education courses pursuant to G.S. 93A-4.1, the courses shall be offered on a self-supporting basis.

(i) Recodified as G.S. 115D-5.1(c) by Session Laws 2005-276, s. 8.4(a), effective July 1, 2005.

(j) The State Board of Community Colleges shall use its Board Reserve Fund for feasibility studies, pilot projects, start-up of new programs, and innovative ideas. The State Board shall report to the Joint Legislative Education Oversight Committee on expenditures from the State Board Reserve Fund on January 15 and June 15 each year.

(k) Recodified as G.S. 115D-5.1(b) by Session Laws 2005-276, s. 8.4(a), effective July 1, 2005.

(*l*) The State Board shall review and approve lease purchase and installment purchase contracts as provided under G.S. 115D-58.15(b). The State Board shall adopt policies and procedures governing the review and approval process.

(m) The State Board of Community Colleges shall maintain an education program auditing function that conducts an annual audit of each community college operating under the provisions of this Chapter. The purpose of the annual audit shall be to ensure that college programs and related fiscal operations comply with State law, State regulations, State Board policies, and System Office guidance. The State Board of Community Colleges shall require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges. All education program audit findings shall be forwarded to the college president, local college board of trustees, the State Board of Community Colleges, and the State Auditor. The State Board shall assess a twenty-five percent (25%) fiscal penalty in addition to the audit exception on all audits of both dollars and student membership hours excepted when the audit exceptions result from nonprocessing errors.

(n) The North Carolina Community Colleges System Office shall provide the Department of Revenue with a list of all community colleges, including name, address, and other identifying information requested by the Department of Revenue. The North Carolina Community Colleges System Office shall update this list whenever there is a change.

(o) The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by October 1 of each year.

(p) The North Carolina Community College System may offer courses, in accordance with the lateral entry program of study established under G.S. 115C-296(c1), to individuals who choose to enter the teaching profession by lateral entry.

(q) The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on October 1 of each year on the use of community college facilities by private businesses.

(r) The State Board of Community Colleges shall develop curriculum and continuing education standards for courses of instruction in American Sign Language and shall encourage community colleges to offer courses in American Sign Language as a modern foreign language.

(s) The State Board of Community Colleges may retain and budget fees charged to students taking the General Education Development (GED) test. Fees collected for this purpose shall be used only to (i) offset the costs of the GED test, including the cost of scoring the test, (ii) offset the course of printing GED certificates, and (iii) meet federal and State reporting requirements related to the test.

(t) The purpose of the first semester of the Gateway to College Program is to address additional support to successfully complete the program. Students may need to take developmental courses necessary for the transition to more challenging courses; therefore, the State Board of Community Colleges shall (i) permit high school students who are enrolled in Gateway to College Programs to enroll in developmental courses based on an assessment of their individual student needs by a high school and community college staff team and (ii) include this coursework in computing the budget FTE for the colleges. (1963, c. 488, s. 23; 1967, c. 652; 1969, c. 1294; 1973, c. 768; 1975, c. 882; 1977, c. 1065; 1979, c. 462, s. 2; c. 896, ss. 5-7; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 609; c. 859, s. 35.1; c. 897; c. 1127, s. 43; 1983, c. 717, s. 28; 1983 (Reg. Sess., 1984), c. 1034, ss. 45, 46; 1985, c. 479, s. 67; 1985 (Reg. Sess., 1986), c. 955, s. 22; 1987, c. 282, s. 34; c. 564, ss. 8-10, 12, 33; c. 763, s. 1; 1989, c. 162; 1989 (Reg. Sess., 1990), c. 915, s. 1; c. 1066, s. 91; 1991, c. 689, ss. 44, 48; 1991 (Reg. Sess., 1992), c. 880, s. 4; 1993, c. 170, s. 2; c. 321, ss. 111, 117(e); c. 492, s. 2; 1993 (Reg. Sess., 1994), c. 769, s. 18.4; 1995, c. 288, s. 2; c. 324, s. 16.4; 1996, 2nd Ex. Sess., c. 18, ss. 17.4, 17.7(a); 1997-443, ss. 9.5, 9.6(a), 11A.118(a); 1997-507, s. 4; 1998-111, s. 3; 1998-202, s. 4(q); 1999-84, ss. 3, 9; 1999-243, s. 9; 2000-137, s. 4(t); 2001-111, s. 1; 2001-427, s. 9(b); 2001-487, s. 47(e); 2004-124, s. 8.4; 2005-193, s. 1; 2005-198, s. 3; 2005-247, s. 3; 2005-276, ss. 8.4(a), 8.6; 2005-395, s. 25; 2006-203, s. 37; 2007-154, s. 2(a); 2007-484, ss. 29(a), 35; 2008-107, ss. 8.11, 8.17, 8.18.)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, ss. 8.11, 8.17, 8.18, effective July 1, 2008, in subsection (b), made a minor grammatical change and inserted "and elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR)" preceding "Provided further, tuition"; and added subsections (s) and (t).

§ 115D-5.1. Workforce Development Programs.

(a) Community colleges shall assist in the preemployment and in-service training of employees in industry, business, agriculture, health occupation and governmental agencies. Such training shall include instruction on worker safety and health standards and practices applicable to the field of employment. The State Board of Community Colleges shall make appropriate regulations including the establishment of maximum hours of instruction which may be offered at State expense in each in-plant training program. No instructor or other employee of a community college shall engage in the normal management, supervisory and operational functions of the establishment in which the instruction is offered during the hours in which the instructor or other employee is employed for instructional or educational purposes.

(b) through (d) Repealed by Session Laws 2008-107, s. 8.7(a), effective July 1, 2008.

(e) There is created within the North Carolina Community College System the Customized Training Program. The Customized Training Program shall offer programs and training services to assist new and existing business and industry to remain productive, profitable, and within the State. Before a business or industry qualifies to receive assistance under the Customized Training Program, the President of the North Carolina Community College System shall determine that:

(1) The business is making an appreciable capital investment;
(2) The business is deploying new technology;
(2a) The business or individual is creating jobs, expanding an existing workforce, or enhancing the productivity and profitability of the operations within the State; and
(3) The skills of the workers will be enhanced by the assistance.

(f) The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee on:

(1) The total amount of funds received by a company under the CIT Program;
(2) The amount of funds per trainee received by that company;
(3) The amount of funds received per trainee by the community college delivering the training;
(4) The number of trainees trained by the company and community college; and
(5) The number of years that company has been funded.

(f1) Notwithstanding any other provision of law, the State Board of Community Colleges may adopt rules and guidelines that allow the Customized Training Program and the Focused Industrial Training Program to use funds appropriated for those programs to support training projects for the various branches of the United States Armed Forces.

(f2) Funds available to the Customized Training Program shall not revert at the end of a fiscal year but shall remain available until expended. Up to ten percent (10%) of the college-delivered training expenditures and up to five percent (5%) of the contractor-delivered training expenditures for the prior fiscal year for Customized Training may be allotted to each college for capacity building at that college.

(f3) Of the funds appropriated in a fiscal year for the Customized Training Programs, the State Board of Community Colleges may approve the use of up to eight percent (8%) for the training and support of regional community college personnel to deliver Customized Industry Training Program services to business and industry.

(g) The State Board shall adopt rules and policies to implement this section. (2005-276, s. 8.4(a), (b); 2005-445, s. 3; 2008-107, s. 8.7(a).)

Editor's Note. —

Session Laws 2008-107, s. 8.7(b), provides: "The State Board of Community Colleges shall transfer funds appropriated for the New and Expanding Industry Training Program and the Focused Industrial Training Program to the Customized Industry Training Programs appropriation. This transfer shall be completed by September 1, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 8.7(a), effective July 1, 2008, deleted subsections (b) through (d), related to the North Carolina Community College System's New and Expanding Industry Training (NEIT) Program Guidelines; in subsection (e), substituted "Training" for "Industry," deleted "CIT" three times, and substituted "to assist new and" for "as new options for assisting"; deleted "and" at the end of subdivision (e)(2) and added subdivision (e)(2a); and added subsections (f1) through (f3).

ARTICLE 2.

Local Administration.

§ 115D-15.1. Disposition, acquisition, and construction of property by community college.

Local Modification. — Burke: 2007-35, s. 1(a) (as to building located at 2128 South Sterling Street in Morganton); Richmond Community College and City of Laurinburg: 2008-72 (expires December 31, 2011); Western Piedmont Community College: 2007-35, s. 1(a).

§ 115D-20. Powers and duties of trustees.

The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and as are delegated to it by the State Board of Community Colleges. The powers and duties of trustees shall include the following:

(1) To elect a president or chief administrative officer of the institution for such term and under such conditions as the trustees may fix, such election to be subject to the approval of the State Board of Community Colleges.

(2) To elect or employ all other personnel of the institution upon nomination by the president or chief administrative officer, subject to standards established by the State Board of Community Colleges. Trustees may delegate the authority of employing such other personnel to its president or chief administrative officer.

(3) To purchase any land, easement, or right-of-way which shall be necessary for the proper operation of the institution, upon approval of the State Board of Community Colleges, and if necessary, to acquire land by condemnation in the same manner and under the same procedures as provided in General Statutes Chapter 40A. For the purpose of condemnation, the determination by the trustees as to the location and amount of land to be taken and the necessity therefor shall be conclusive.

(4) To apply the standards and requirements for admission and graduation of students and other standards established by the State Board of Community Colleges. Provided, notwithstanding any law or administrative rule to the contrary, local administrative boards and local school boards may establish cooperative programs in the areas they

serve to provide for college courses to be offered to qualified high school students with college credits to be awarded to those high school students upon the successful completion of the courses. Provided, further, that during the summer quarter, persons less than 16 years old may be permitted to take noncredit courses on a self-supporting basis, subject to rules of the State Board of Community Colleges.

(5) To receive and accept donations, gifts, bequests, and the like from private donors and to apply them or invest any of them and apply the proceeds for purposes and upon the terms which the donor may prescribe and which are consistent with the provisions of this Chapter and the regulations of the State Board of Community Colleges.

(6) To provide all or part of the instructional services for the institution by contracting with other public or private organizations or institutions in accordance with regulations and standards adopted by the State Board of Community Colleges.

(7) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations, and bylaws for the government and operation of the institution under this Chapter and for the discipline of students.

(8) If a board of trustees of an institution provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the board of trustees shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.

(9) To encourage the establishment of private, nonprofit corporations to support the institution. The president, with approval of the board of trustees, may assign employees to assist with the establishment and operation of such corporation and may make available to the corporation office space, equipment, supplies and other related resources; provided, the sole purpose of the corporation is to support the institution. The board of directors of each private, nonprofit corporation shall secure and pay for the services of the State Auditor's Office or employ a certified public accountant to conduct an annual audit of the financial accounts of the corporation. The board of directors shall transmit to the board of trustees a copy of the annual financial audit report of the private nonprofit corporation.

(10) To enter into guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(10a) To enter into loan agreements under the Energy Improvement Loan Program pursuant to Part 3 of Article 36 of Chapter 143 of the General Statutes.

(11) To enter into lease purchase and installment purchase contracts for equipment under G.S. 115D-58.15.

(12) Notwithstanding the provisions of this Chapter, a community college may permit the use of its personnel or facilities, in support of or by a private business enterprise located on a community college campus or in the service area of a community college for the specific purposes set out in G.S. 66-58(c)(3a) and G.S. 66-58(c)(3d). The board of trustees of a community college must specifically approve any use of facilities or personnel under this subdivision. The State Board shall adopt rules to implement this subdivision, G.S. 66-58(c)(3a), and G.S. 66-58(c)(3d).

(13) To enter into a public/private partnership in which all of the following conditions are met:

a. The agreement is approved in advance by the State Board of Community Colleges.
b. The board of trustees agrees to lease community college land to a private entity on condition that the entity construct a facility on the leased land.
c. The facility will be jointly owned and used by the private entity and the community college.
d. The board of trustees is not authorized to lease the facility as lessee under a long-term lease or capital lease from the private entity as lessor.
e. The board of trustees is not authorized to finance its portion of the facility by entering into an installment contract or other financing contract with the private entity.
f. State bond funds shall not be used to pay for construction of that part of the facility to be owned and used by the private entity.
g. The provisions of G.S. 143-341(3)a. apply to the construction of a facility under this subsection.

(14) To comply with the design and construction requirements regarding energy efficiency and water use in the Sustainable Energy-Efficient Buildings Program under Article 8C of Chapter 143 of the General Statutes. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 901, s. 2; 1983, c. 378, s. 1; c. 596, s. 1; 1985, c. 191; 1987, c. 383, s. 2; 1993 (Reg. Sess., 1994), c. 775, s. 7; 1998-111, s. 1; 2001-368, s. 2; 2003-286, s. 1; 2005-247, s. 2; 2006-259, s. 21; 2007-476, s. 1; 2008-203, s. 2.)

Editor's Note. —

Session Laws 2008-203, s. 7, provides, in part, that the amendment to this section by s. 2 of the act is applicable to every major facility construction project, as defined in G.S. 143-135.36 as enacted in s. 1 of the act, and every major facility renovation project, as defined in G.S. 143-135.36 as enacted in s. 1 of the act, of a public agency, as defined in G.S. 143-135.36 as enacted in s. 1 of the act, that has not entered the schematic design phase prior to August 8, 2008.

Effect of Amendments. —

Session Laws 2008-203, s. 2, effective August 8, 2008, added subdivision (14). See Editor's note for applicability.

§ 115D-20.1. Policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events.

(a) As used in this section:

(1) "Tobacco product" includes cigarettes, cigars, blunts, bidis, pipes, chewing tobacco, snus, snuff, and any other items containing or reasonably resembling tobacco or tobacco products.

(2) "Tobacco use" includes smoking, chewing, dipping, or any other use of tobacco products.

(b) Local community college boards of trustees may adopt, implement, and enforce a written policy prohibiting at all times the use of any tobacco product by any person in community college buildings, in community college facilities, on community college campuses, in vehicles owned, leased, or operated by the local community college, and in or on any other community college property owned, leased, or operated by the local community college. The policy may also prohibit the use of all tobacco products by persons attending a community college-sponsored event.

(c) The policy adopted by a local community college board of trustees may include the following elements:

(1) Adequate notice of the policy to students, parents, the public, and school personnel.

(2) Posting of signs prohibiting at all times the use of tobacco products by any person in and on community college property.
(3) Requirements that community college personnel develop plans for successful implementation of and compliance with the policy.
(4) Permission for tobacco products to be included in instructional or research activities in community college buildings if the activity is conducted or supervised by the faculty member overseeing the instruction or research and the activity does not include smoking, chewing, or otherwise ingesting the tobacco product.

(d) Nothing in G.S. 130A-498, G.S. 143-595 through G.S. 143-601, or any other section prohibits a local community college board of trustees from adopting and enforcing a more restrictive policy on the use of tobacco in community college buildings, in community college facilities, on community college campuses, or at community college-related or community college-sponsored events, and in or on other community college property.

(e) The North Carolina Tobacco Prevention and Control Branch and the Health and Wellness Trust Fund Commission shall work with local community college boards of trustees to provide assistance with the development and implementation of the policy including providing information regarding smoking cessation and prevention resources. (2008-95, ss. 2, 3.)

Editor's Note. — Session Laws 2008-95, s. 4, made this section effective July 11, 2008.

Session Laws 2008-95, s. 3, effective July 11, 2008, was codified as subsection (e) of this section at the direction of the Revisor of Statutes.

ARTICLE 2A.

Privacy of Employee Personnel Records.

§ 115D-29. Confidential information in personnel files; access to information.

(a) All information contained in a personnel file, except as otherwise provided in this Article, is confidential and shall not be open for inspection and examination except to the following persons:
(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment;
(2) The president and other supervisory personnel;
(3) Members of the board of trustees and the board's attorney;
(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file; and
(5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such [an] inspection is deemed by the college of the employee, applicant, or former employee whose record is to be inspected as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation.

(b) Notwithstanding any other provision of this Article, any president may, in his discretion, or shall at the direction of the board of trustees, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the board of trustees or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the president shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the president and shall be a public record.

(c) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former community college employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees. (1991, c. 84, s. 3; 2008-194, s. 11(c).)

Effect of Amendments. — Session Laws 2008-194, s. 11(c), effective August 8, 2008, inserted the subsection (a) and (b) designations and added subsection (c).

ARTICLE 3.

Financial Support.

§ 115D-32. Local financial support of institutions.

Editor's Note. — Session Laws 2008-107, s. 8.10, provides: "Notwithstanding G.S. 115D-32 or any other provision of law, a community college may use up to two percent (2%) of the noninstructional State funds allocated to it in the institutional support allotment for the 2008-2009 fiscal year for campus security. This may include the hiring of personnel, contracted professional services, surveillance cameras, call boxes, alert systems, and other equipment-related expenditures.

"These funds shall be used to supplement and shall not be used to supplant existing local funding for campus security."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Chapter 116.

Higher Education.

Article 1.

The University of North Carolina.

Part 1. General Provisions.

Sec.
116-2. Definitions.

Part 2. Organization, Governance and Property of the University.

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ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Purpose.

Editor's Note. —
Session Laws 2008-204, ss. 1.1 through 1.9, authorizes construction of specified improvement projects at University of North Carolina constituent institutions and the funding therefore.

Session Laws 2008-204, s. 1.6, provides: "With respect to the University of North Carolina at Chapel Hill's Research Resource Facility - Phase III capital project, East Carolina University's Athletic Facilities Expansion and Improvements capital project, and North Carolina

State University's Avent Ferry Administration Center Renovation capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution."

Session Laws 2008-204, s. 1.9, provides: "With respect to the University of North Carolina at Chapel Hill's Cogeneration and Steam Infrastructure Improvements and Expansion capital project, the institution may accomplish the construction and financing of the Landfill Gas Utilization portion thereof notwithstanding the requirement in G.S. 116D-22(5) as to location of the special obligation project at the institution. The University of North Carolina at Chapel Hill may enter into any other required agreements as necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such acquisition, negotiation, and execution of such rights-of-way, easements, leases, or other required agreements therefor."

§ 116-2. Definitions.

As used in this Article, unless the context clearly indicates a contrary intent:

(1) "Board" means the Board of Governors of the University of North Carolina.

(2) "Board of trustees" means the board of trustees of a constituent institution.

(3) "Chancellor" means the chancellor of a constituent institution.

(4) "Constituent institution" or "institution" means one of the 16 public institutions of higher education, to wit, the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University, and Winston-Salem State University, and the constituent high school, the North Carolina School of Science and Mathematics.

(5) "President" means the President of the University of North Carolina.

(6) "Vending facilities" has the same meaning as it does in G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means. (1971, c. 1244, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 171; 1995 (Reg. Sess., 1996), c. 603, s. 1; 2006-66, s. 9.11(a); 2006-203, s. 39; 2008-192, s. 1.)

Effect of Amendments. —

Session Laws 2008-192, s. 1, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" in subdivision (4).

Part 2. Organization, Governance and Property of the University.

§ 116-4. Constituent institutions of the University of North Carolina.

The University of North Carolina shall be composed of the following institutions of higher education: the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North

Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, and the constituent high school, the North Carolina School of Science and Mathematics. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 2; 2006-66, s. 9.11(b); 2008-192, s. 2.)

Effect of Amendments. —

Session Laws 2008-192, s. 2, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" near the middle of the paragraph.

§ 116-5. Initial membership of Board of Governors.

(a) Commencing July 1, 1972, and continuing for the terms hereinafter stated and until their successors are chosen, the Board of Governors shall consist of the following members:

(1) Three persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of East Carolina University and two persons elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Appalachian State University, North Carolina Agricultural and Technical State University, North Carolina Central University, and Western Carolina University.

(2) One person elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Elizabeth City State University, Fayetteville State University, North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", and Winston-Salem State University.

(3) Sixteen persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina.

(4) Two persons elected prior to January 1, 1972, by the Board of Higher Education from its eight members-at-large. These shall be nonvoting members whose terms shall expire on June 30, 1973.

(b) Of the 16 persons elected by the Board of Trustees of the University of North Carolina, four shall serve a term ending on June 30, 1973, four shall serve a term ending on June 30, 1975, four shall serve a term ending on June 30, 1977, and four shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those 16 persons shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1973, 1975, 1977, and 1979 respectively. Of the 11 persons elected by the boards of trustees of the institutions listed in G.S. 116-5(a)(1), three shall serve a term ending in 1973, three shall serve a term ending on June 30, 1975, three shall serve a term ending on June 30, 1977, and two shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those 11 persons shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1973, 1975, 1977, and 1979 respectively. Of the five persons elected by the boards of trustees of the institutions listed in G.S. 116-5(a)(2), the member elected from the Board of Trustees of the University of North Carolina School of the Arts shall serve a term ending on June 30, 1973, and of the remaining members, one shall serve a term ending on June 30, 1975, one shall serve a term ending on June 30, 1977, and two shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those four persons, excluding the member from the University of North Carolina School of the Arts, shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1975, 1977, and 1979 respectively.

(c) Any vacancy occurring in the membership of the Board of Governors between July 1, 1972, and June 30, 1973, shall be filled by appointment of the Governor, and the person appointed shall serve for the remainder of the unexpired term.

(d) The Governor shall serve ex officio as a member and as chairman of the Board of Governors until December 31, 1972. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 3; 2008-192, ss. 3, 12.)

Effect of Amendments. — Session Laws 2008-192, ss. 3 and 12, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" in subdivision (a)(2); and substituted "University of North Carolina School of the Arts" for "North Carolina School of the Arts" twice in subsection (b).

§ 116-11. Powers and duties generally.

The powers and duties of the Board of Governors shall include the following:

(1) The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina. To this end it shall govern the 16 constituent institutions, subject to the powers and responsibilities given in this Article to the boards of trustees of the institutions, and to this end it shall maintain close liaison with the State Board of Community Colleges, the Community Colleges System Office and the private colleges and universities of the State. The Board, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, shall prepare and from time to time revise a long-range plan for a coordinated system of higher education, supplying copies thereof to the Governor, the members of the General Assembly, and the institutions. Statewide federal or State programs that provide aid to institutions or students of post-secondary education through a State agency, except those related exclusively to the community college system, shall be administered by the Board pursuant to any requirements of State or federal statute in order to insure that all activities are consonant with the State's long-range plan for higher education.

(2) The Board of Governors shall be responsible for the general determination, control, supervision, management and governance of all affairs of the constituent institutions. For this purpose the Board may adopt such policies and regulations as it may deem wise. Subject to applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Governors may acquire, hold, convey or otherwise dispose of, invest and reinvest any and all real and personal property, with the exception of any property that may be held by trustees of institutional endowment funds under the provisions of G.S. 116-36 or that may be held, under authority delegated by the Board of Governors, either by a board of trustees or by trustees of any other endowment or trust fund.

(3) The Board shall determine the functions, educational activities and academic programs of the constituent institutions. The Board shall also determine the types of degrees to be awarded. The powers herein given to the Board shall not be restricted by any provision of law assigning specific functions or responsibilities to designated institutions, the powers herein given superseding any such provisions of law. The Board, after adequate notice and after affording the institutional board of trustees an opportunity to be heard, shall have authority to withdraw approval of any existing program if it appears that the program is unproductive, excessively costly or unnecessarily duplicative. The Board shall review the productivity of academic degree programs every two years, using criteria specifically developed to determine program productivity.

(4) The Board of Governors shall elect officers as provided in G.S. 116-14. Subject to the provisions of section 18 of this act [Session Laws 1971, Chapter 1244, section 18], the Board shall also elect, on nomination of the President, the chancellor of each of the constituent institutions and fix his compensation. The President shall make his nomination from a list of not fewer than two names recommended by the institutional board of trustees.

(4b) The Board of Governors shall encourage the constituent institutions to offer courses in American Sign Language as a modern foreign language.

(5) The Board of Governors shall, on recommendation of the President and of the appropriate institutional chancellor, appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers and persons having permanent tenure.

(5a) [Expired.]

(5b) The Board of Governors may by resolution provide that, until July 1, 1998, every president, vice-president, and other administrative officer of the University whom it elects and who is not subject to Chapter 126 of the General Statutes, and every chancellor, vice-chancellor, senior academic officer, senior administrative officer, and faculty member who serves a constituent institution or agency of the University and who is not subject to Chapter 126 of the General Statutes, shall retire on July 1 coincident with or next following his seventieth birthday, unless continued in service on a year-to-year basis in accordance with regulations adopted by the Board of Governors.

(6) The Board shall approve the establishment of any new publicly supported institution above the community college level.

(7) The Board shall set tuition and required fees at the institutions, not inconsistent with actions of the General Assembly.

(8) The Board shall set enrollment levels of the constituent institutions.

(8a) The Board of Governors, after consultation with representatives from nonpublic schools, including representatives of nonpublic schools operated under Parts 1 and 3 of Article 39 of Chapter 115C of the General Statutes, and after taking into consideration comments received from the Joint Legislative Education Oversight Committee, shall adopt a policy regarding uniform admissions requirements for applicants from nonpublic schools lawfully operated under Article 39 of Chapter 115C of the General Statutes. The policy shall not arbitrarily differentiate between applicants based upon whether the applicant attended a public or a lawfully operated nonpublic school.

(9)a. The Board of Governors shall develop, prepare and present to the Governor and the General Assembly a single, unified recommended budget for all of the constituent institutions of The

University of North Carolina. The recommendations shall consist of requests in three general categories: (i) funds for the continuing operation of each constituent institution, (ii) funds for salary increases for employees exempt from the State Personnel Act and (iii) funds requested without reference to constituent institutions, itemized as to priority and covering such areas as new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served, capital improvements, improvements in levels of operation and increases to remedy deficiencies, as well as other areas. The president may present to the General Assembly an updated estimate of tuition, fees, and other receipts by June 15 of each year to be included in the budget for the following fiscal year.

a1. The Board of Governors shall provide full documentation and justification of any enrollment change funding request at the time it is recommended. This documentation and justification shall include the most recent academic year's actual enrollment numbers in the same format in which the growth increase request is made. The actual enrollment numbers shall be the actual student credit hours (SCH) or full-time equivalencies (FTE).

b. Funds for the continuing operation of each constituent institution shall be appropriated directly to the institution. Funds for salary increases for employees exempt from the State Personnel Act shall be appropriated to the Board in a lump sum for allocation to the institutions. Funds for the third category in paragraph a of this subdivision shall be appropriated to the Board in a lump sum for allocation to the institutions. The Board shall make allocations among the institutions in accordance with the Board's schedule of priorities and any specifications in the Current Operations Appropriations Act. When both the Board and the Director of the Budget deem it to be in the best interest of the State, funds in the third category may be allocated, in whole or in part, for other items within the list of priorities or for items not included in the list. Provided, nothing herein shall be construed to allow the General Assembly, except as to capital improvements, to refer to particular constituent institutions in any specifications as to priorities in the third category.

c. The Director of the Budget may, on recommendation of the Board, authorize transfer of appropriated funds from one institution to another to provide adjustments for over or under enrollment or may make any other adjustments among institutions that would provide for the orderly and efficient operation of the institutions.

d. Repealed by Session Laws 1987, c. 795, s. 27.

(10) The Board shall collect and disseminate data concerning higher education in the State. To this end it shall work cooperatively with the Community Colleges System Office and shall seek the assistance of the private colleges and universities. It may prescribe for the constituent institutions such uniform reporting practices and policies as it may deem desirable.

(10a) The Board of Governors, the State Board of Community Colleges, and the State Board of Education, in consultation with private higher education institutions defined in G.S. 116-22(1), shall plan a system to provide an exchange of information among the public schools and institutions of higher education to be implemented no later than June 30, 1995. As used in this section, "institutions of higher education" shall mean public higher education institutions defined in G.S. 116-143.1(a)(3), and those private higher education institutions defined in G.S. 116-22(1) that choose to participate in the information exchange. The information shall include:

a. The number of high school graduates who apply to, are admitted to, and enroll in institutions of higher education;
b. College performance of high school graduates for the year immediately following high school graduation including each student's: need for remedial coursework at the institution of higher education that the student attends; performance in standard freshmen courses; and continued enrollment in a subsequent year in the same or another institution of higher education in the State;
c. The progress of students from one institution of higher education to another; and
d. Consistent and uniform public school course information including course code, name, and description.

The Department of Public Instruction shall generate and the local school administrative units shall use standardized transcripts in an automated format for applicants to higher education institutions. The standardized transcript shall include grade point average, class rank, end-of-course test scores, and uniform course information including course code, name, units earned toward graduation, and credits earned for admission from an institution of higher education. The grade point average and class rank shall be calculated by a standard method to be devised by the institutions of higher education.

The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1993, and annually thereafter.

(10b) The Board of Governors of The University of North Carolina shall report to each community college and to the State Board of Community Colleges on the academic performance of that community college's transfer students.

(11) The Board shall assess the contributions and needs of the private colleges and universities of the State and shall give advice and recommendations to the General Assembly to the end that the resources of these institutions may be utilized in the best interest of the State.

(12) The Board shall give advice and recommendations concerning higher education to the Governor, the General Assembly, and the boards of trustees of the institutions.

(12a) The Board of Governors of The University of North Carolina shall implement, administer, and revise programs for meaningful professional development for professional public school employees based upon the evaluations and recommendations made by the State Board of Education under G.S. 115C-12(26). The programs shall be aligned with State education goals and directed toward improving student academic achievement. The Board of Governors shall submit to the State Board of Education an annual report evaluating the professional development programs administered by the Board of Governors.

(12b) The Board of Governors of The University of North Carolina shall designate the UNC programs that will comprise the UNC Center for School Leadership Development. The Board of Governors shall submit to the Governor and the General Assembly a single, unified recommended budget for the continued operation and expansion of the programs in the Center for School Leadership Development.

(12c) The Board of Governors may create one airport authority to support the missions of the University of North Carolina at Chapel Hill or the University of North Carolina Health Care System. An authority so created shall be a political subdivision of the State. The territorial jurisdiction of the authority shall be the county in which the the airport may be established under G.S. 116-271(c). Article 33 of this Chapter provides for such authorities.

(13) The Board may delegate any part of its authority over the affairs of any institution to the board of trustees or, through the President, to the chancellor of the institution in any case where such delegation appears necessary or prudent to enable the institution to function in a proper and expeditious manner. The Board may delegate any part of its authority over the affairs of The University of North Carolina to the President in any case where such delegation appears necessary or prudent to enable The University of North Carolina to function in a proper and expeditious manner. Any delegation of authority may be rescinded by the Board at any time in whole or in part.

(14) The Board shall possess all powers not specifically given to institutional boards of trustees. (1971, c. 1244, s. 1; 1979, c. 862, s. 8; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 163; c. 717, ss. 29, 30; c. 761, s. 113; 1983 (Reg. Sess., 1984), c. 1019, s. 2; 1985, c. 757, s. 152; 1985 (Reg. Sess., 1986), c. 955, ss. 23-27; 1987, c. 795, s. 27; 1991 (Reg. Sess., 1992), c. 880, ss. 2, 6; c. 1039, s. 25; 1993, c. 407, s. 2; 1993 (Reg. Sess., 1994), c. 677, s. 14; 1995, c. 288, s. 3; 1997-221, s. 12(b); 1997-240, s. 3; 1998-212, s. 11.12(a); 1999-84, s. 19; 2001-424, s. 31.4(b); 2005-276, s. 9.34(b); 2006-66, s. 9.17(a); 2006-95, s. 2.2; 2006-203, s. 40; 2007-154, s. 3(a); 2008-107, s. 9.8; 2008-204, s. 4.1.)

Editor's Note. —

Session Laws 2008-107, s. 9.7(c), provides: "The University of North Carolina and Community Colleges System Office shall report by September 1, 2008, and annually thereafter, to the Joint Legislative Education Oversight Commission, the State Board of Education, the Office of State Budget and Management, and the Fiscal Research Division of the General Assembly on the implementation of the UNC-NCCCS 2+2 E-Learning Initiative. This report shall include:

"(1) The courses and programs within the 2+2 E-Learning Initiative;

"(2) The total number of prospective teachers that have taken or are taking part in this initiative to date broken down by the current academic period and each of the previous academic periods since the program's inception;

"(3) The total number of teachers currently in the State's classrooms, by local school administrative unit, who have taken part in this initiative;

"(4) The change in the number of teachers available to schools since the program's inception;

"(5) The qualitative data from students, teachers, local school administrative unit personnel, university personnel, and community college personnel as to the impact of this initiative on our State's teaching pool; and

"(6) An explanation of the expenditures and collaborative programs between the North Carolina Community College System and The University of North Carolina, including recommendations for improvement."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 9.8, effective July 1, 2008, added subdivision (9)a1.

Session Laws 2008-204, s. 4.1, effective August 8, 2008, added subdivision (12c).

§ 116-12. Property and obligations.

All property of whatsoever kind and all rights and privileges held by the Board of Higher Education and by the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said property, rights and privileges may exist immediately prior to July 1, 1972, shall be, and hereby are, effective July 1, 1972, transferred to and vested in the Board of Governors of the University of North Carolina. All obligations of whatsoever kind of the Board of Higher Education and of the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said obligations may exist immediately prior to July 1, 1972, shall be, and the same hereby are, effective July 1, 1972, transferred to and assumed by the Board of Governors of the University of North Carolina. Any property, real or personal, held immediately prior to July 1, 1972, by a board of trustees of a constituent institution for the benefit of that institution or by the University of North Carolina for the benefit of any one or more of its six institutions, shall from and after July 1, 1972, be kept separate and distinct from other property held by the Board of Governors, shall continue to be held for the benefit of the institution or institutions that were previously the beneficiaries and shall continue to be held subject to the provisions of the respective instruments, grants or other means or process by which any property right was acquired. All property of whatsoever kind and all rights and privileges held by the Board of Trustees of the North Carolina School of Science and Mathematics, as said property, rights and privileges may exist immediately prior to July 1, 2007, shall be and hereby are, effective July 1, 2007, transferred to and vested in the Board of Governors of The University of North Carolina. All obligations of whatsoever kind of the Board of Trustees of the North Carolina School of Science and Mathematics as said obligations may exist immediately prior to July 1, 2007, shall be, and the same hereby are, effective July 1, 2007, transferred to and assumed by the Board of Governors of The University of North Carolina. In case a conflict arises as to which property, rights or privileges were held for the beneficial interest of a particular institution, or as to the extent to which such property, rights or privileges were so held, the Board of Governors shall determine the issue, and the determination of the Board shall constitute final administrative action. Nothing in this Article shall be deemed to increase or diminish the income, other revenue or specific property which is pledged, or otherwise hypothecated, for the security or liquidation of any obligations, it being the intent that the Board of Governors shall assume said obligations without thereby either enlarging or diminishing the rights of the holders thereof. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 4; 2006-66, s. 9.11(c); 2008-192, s. 4.)

Effect of Amendments. —

Session Laws 2008-192, s. 4, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" twice in the section.

§ 116-21.2. Legislative tuition grants to aid students and licensure students attending private institutions of higher education.

(a) Grants for Students. — In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to institutions, or to persons attending these institutions, there is granted to each North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, to be determined by the General Assembly for each academic year which shall be distributed to the undergraduate student as provided by this subsection. A full-time North Carolina undergraduate student shall be awarded the full amount of the tuition grant provided by this section. A part-time North Carolina undergraduate student who is enrolled to take at least six hours of academic credit per semester shall be awarded a tuition grant in an amount that is calculated on a pro rata basis.

(a1) Grants for Licensure Students. — The legislative tuition grant provided by this section shall also be granted to each full-time licensure student who is enrolled in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant provided by this section shall be awarded on a pro rata basis to any part-time licensure student who is enrolled to take at least six hours of undergraduate academic credit per semester in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant and prorated legislative tuition grant authorized under this subsection shall be paid for undergraduate courses only. If a course is required for licensure, but is designated as both an undergraduate and graduate course, for purposes of this subsection, the course shall be considered an undergraduate course.

(b) Administration of Grants. — The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student or licensure student applying for the grant is eligible. Upon receipt of the certification, the State Education Assistance Authority shall remit at the times as it prescribes the grant to the approved institution on behalf, and to the credit, of the student or licensure student.

(c) Student or Licensure Student Change of Status; Audits. — In the event a full-time student on whose behalf a grant has been paid in accordance with subsection (a) of this section or a full-time licensure student on whose behalf a grant has been paid in accordance with subsection (a1) of this section is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If a part-time student on whose behalf a prorated grant has been paid in accordance with subsection (a) of this section or a part-time licensure student on whose behalf a prorated grant has been paid in accordance with subsection (a1) of this section is not enrolled and carrying a minimum academic load of six credit hours per semester in the undergraduate class as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If the matriculated status of a full-time student or a full-time licensure student changes to a matriculated status of part-time student or part-time licensure student by the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund only the difference between the amount of the full-time grant awarded and the amount of the part-time grant that is awarded pursuant to this section. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and licensure students and credited grants paid on behalf of them.

(d) Shortfall. — In the event there are not sufficient funds to provide each eligible student or licensure student with a full or prorated grant as provided by subsection (a) of this section or a full or a prorated grant as provided by subsection (a1) of this section:

(1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a), (a1), and (b) of this section; and

(2) Each eligible student and licensure student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

(e) Reversions. — Any remaining funds shall revert to the General Fund. (2001-424, s. 31.1(a); 2006-66, s. 9.13(d); 2007-323, s. 9.13(a); 2008-107, s. 9.11(a).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 9.11(a), effective July 1, 2008, and applicable to academic semesters beginning on or after July 1, 2008, substituted "six" for "nine" preceding "hours" in subsections (a) and (a1), and substituted "six" for "nine" preceding "credit hours" in subsection (c).

§ 116-29.5. (For contingent expiration date — See Editor's note) Biomedical Research Imaging Center.

The General Assembly finds that the construction of the Biomedical Research Imaging Center at the University of North Carolina at Chapel Hill is a vital component of the State's efforts to improve the health and wellness of its citizens. Therefore, there is appropriated from the General Fund to the Board of Governors of The University of North Carolina the following sums for the corresponding fiscal year to be used for the planning and construction of the Biomedical Research Imaging Center:

Fiscal Year	Amount:
2009-2010	$172,000,000
2010-2011	$45,000,000

(2008-107, s. 27.7B(a).)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 27.7B(b), provides: "It is the intent of the General Assembly that the 2009 Regular Session of the 2009 General Assembly authorize sufficient debt financing to complete the Biomedical Research Imaging Center at the University of North Carolina at Chapel Hill."

Session Laws 2008-107, s. 27.7B(c), provides: "Subsection (a) of this section expires if legislation becomes law on or before June 30, 2009, that authorizes sufficient debt financing to complete the Biomedical Research Imaging Center at the University of North Carolina at Chapel Hill, as requested by the Board of Governors of The University of North Carolina."

Session Laws 2008-107, s. 1.2, provides:

"This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Part 2A. Fiscal Accountability and Flexibility.

§ 116-30.7. Biennial projection of enrollment growth for The University of North Carolina.

By September 1 of each even-numbered year, the General Administration of The University of North Carolina shall provide to the Joint Education Legislative Oversight Committee and to the Office of State Budget and Management a projection of the total student enrollment in The University of North Carolina that is anticipated for the next biennium. The enrollment projection shall be divided into the following categories and shall include the projected growth for each year of the biennium in each category at each of the constituent institutions: undergraduate students, graduate students (students earning master's and doctoral degrees), first year professional students, and any other categories deemed appropriate by General Administration. The projection shall also distinguish between on-campus and distance education students. The projections shall be considered by the Director of the Budget when determining the amount the Director proposes to fund as the continuation requirement for the enrollment increase in the university system pursuant to G.S. 143C-3-5(b). (2008-107, s. 9.15.)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Part 3. Constituent Institutions.

§ 116-31. Membership of the boards of trustees.

(a) All persons who, as of June 30, 1972, are serving as trustees of the regional universities and of the North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," except those who may have been elected to the Board of Governors, shall continue to serve for one year beginning July 1, 1972, and the terms of all such trustees shall continue for the period of one year.

(b) Effective July 1, 1972, a separate board of trustees shall be created for each of the following institutions: North Carolina State University at Raleigh, the University of North Carolina at Asheville, the University of North Carolina at Chapel Hill, the University of North Carolina at Charlotte, the University of North Carolina at Greensboro, and the University of North Carolina at Wilmington. For the period commencing July 1, 1972, and ending June 30, 1973, each such board shall be constituted as follows:

(1) Twelve or more persons elected prior to July 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina, and

(2) The president of the student government of the institution, ex officio.

(c) If any vacancy should occur in any board of trustees during the year beginning July 1, 1972, the Governor may appoint a person to serve for the balance of the year.

(d) Except as provided in G.S. 116-65, effective July 1, 1973, each of the 16 institutions of higher education set out in G.S. 116-2(4) shall have board of trustees composed of 13 persons chosen as follows:

(1) Eight elected by the Board of Governors,
(2) Four appointed by the Governor, and
(3) The president of the student government ex officio.

The Board of Trustees of the North Carolina School of Science and Mathematics shall be established in accordance with G.S. 116-233.

(e) From and after July 1, 1973, the term of office of all trustees, except the ex officio member, shall be four years, commencing on July 1 of odd-numbered years. In every odd-numbered year the Board of Governors shall elect four persons to each board of trustees and the Governor shall appoint two persons to each such board.

(f) In electing boards of trustees to serve commencing July 1, 1973, the Board of Governors shall designate four persons for four-year terms and four for two-year terms. The Governor, in making appointments of trustees to serve commencing July 1, 1973, shall designate two persons for four-year terms and two for two-year terms.

(g) From and after July 1, 1973, any person who has served two full four-year terms in succession as a member of a board of trustees shall, for a period of one year, be ineligible for election or appointment to the same board but may be elected or appointed to the board of another institution.

(h) No member of the General Assembly or officer or employee of the State, The University of North Carolina, or any constituent institution shall be eligible for election or appointment as a trustee. No spouse of a member of the General Assembly, or of an officer or employee of a constituent institution may be a trustee of that constituent institution. Any trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State, The University of North Carolina, or any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes an officer or employee of that constituent institution shall be deemed thereupon to resign from his membership on the board of trustees.

(i) No person may serve simultaneously as a member of a board of trustees and as a member of the Board of Governors. Any trustee who is elected or appointed to the Board of Governors shall be deemed to resign as a trustee effective as of the date that his term commences as a member of the Board of Governors.

(j) From and after July 1, 1973, whenever any vacancy shall occur in the membership of a board of trustees among those appointed by the Governor, it shall be the duty of the secretary of the board to inform the Governor of the existence of such vacancy, and the Governor shall appoint a person to fill the unexpired term, and whenever any vacancy shall occur among those elected by the Board of Governors, it shall be the duty of the secretary of the board to inform the Board of Governors of the existence of the vacancy, and the Board of Governors shall elect a person to fill the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present for three successive regular meetings of a board of trustees, his place as a member shall be deemed vacant. (1971, c. 1244, s. 1; 2006-66, s. 9.11(g); 2007-278, s. 2; 2008-192, s. 5.)

Effect of Amendments. —

Session Laws 2008-192, s. 5, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" in subsection (a).

§ 116-36.1. Regulation of institutional trust funds.

(a) The Board is responsible for the custody and management of the trust funds of the University of North Carolina and of each institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The Board may delegate authority, through the president, to the respective chancellors of the institutions when such delegation is necessary or prudent to enable the institution to function in a proper and expeditious manner.

(b) Trust funds shall be deposited with the State Treasurer who shall hold them in trust in separate accounts in the name of the University of North Carolina and of each institution. The cash balances of these accounts may be pooled for investment purposes, but investment earnings shall be credited pro rata to each participating account. For purposes of distribution of investment earnings, all trust funds of an institution shall be deemed a single account.

(c) Moneys deposited with the State Treasurer in trust fund accounts pursuant to this section, and investment earnings thereon, are available for expenditure by each institution without further authorization from the General Assembly.

(d) Trust funds are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the State Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143C-8-8 and G.S. 143C-8-9.

(e) Each institution shall submit such reports or other information concerning its trust fund accounts as may be required by the Director of the Budget.

(f) Trust funds or the investment income therefrom shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes is appropriated and shall be used to supplement State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(g) As used in this section, "trust funds" means:

(1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;

(2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;

(3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;

(4) Moneys collected by an institution to support extracurricular activities of students of the institution;

(5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;

(6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;

(7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider;

(8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State agency;

(9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs;

(10) Moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o.;

(11) Moneys deposited to the State Education Assistance Authority Fund pursuant to G.S. 116-209.3.

(h) Notwithstanding the provisions of subsection (b) of this section, the Board may designate as the official depository of the funds identified in subsection (g)(7) of this section one or more banks or trust companies in this State. The amount of funds on deposit in an official depository shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of public deposits generally. The available cash balance of funds deposited pursuant to this subsection shall be invested in interest-bearing deposits and investments so that the rate of return equals that realized from the investment of State funds generally.

(i) The cash balances on hand as of June 30, 1978, and all future receipts accruing thereafter, of funds identified in this section are hereby appropriated to the use of the University of North Carolina and its constituent institutions. (1977, 2nd Sess., c. 1136, s. 30; 1981, c. 529; 1983, c. 913, s. 19; 1989 (Reg. Sess., 1990), c. 936, s. 1(c); 2005-397, s. 3; 2006-203, s. 45.)

Editor's Note. — The section is set out in the supplement to correct an error in the main volume.

Subdivision (11) of this section was enacted as subdivision (10) by Session Laws 2006-203, s. 45. It was renumbered as subdivision (11) at the direction of the Revisor of Statutes.

§ 116-36.6. East Carolina University School of Medicine; Medicare receipts.

The East Carolina University School of Medicine shall request, on a regular basis consistent with the State's cash management plan, funds earned by the School from Medicare reimbursements for education costs. Upon receipt, these funds are appropriated and shall be allocated as follows:

(1) The portion of the Medicare reimbursement generated through the effort and expense of the School of Medicine's Medical Faculty Practice Plan shall be transferred to the appropriate Medical Faculty Practice Plan account within the School of Medicine. The Medical Faculty Practice Plan shall assume responsibility for any of these funds that subsequently must be refunded due to final audit settlements.

(2) Repealed by Session Laws 2005-276, s. 9.26(a).

(2a) Funds that were received pursuant to this section prior to July 1, 2005, and that were transferred to a special fund account on deposit with the State Treasurer are appropriated to the Brody School of Medicine at East Carolina University and may be expended by the Brody School of Medicine for the family medicine center and for purposes consistent with its stated mission.

(3) Repealed by Session Laws 2005-276, s. 9.26(a). (1995, c. 507, s. 15.4; 2005-276, s. 9.26(a); 2006-203, s. 47.1.)

Editor's Note. — The section is set out in the supplement to correct an error in the main volume.

Part 4A. Distinguished Professors Endowment Trust Fund.

§ 116-41.13A. Distinguished Professors Endowment Trust Fund; definitions.

The following definitions apply in this Part:

(1) "Focused growth institution" means Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical University, North Carolina Central University, The University of North Carolina at Pembroke, Western Carolina University, and Winston-Salem State University.

(2) "Special needs institution" means the North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," and The University of North Carolina at Asheville. (2003-293, s. 1; 2008-192, s. 6.)

Effect of Amendments. — Session Laws 2008-192, s. 6, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" in subdivision (2).

§ 116-44.4. Regulation of traffic and parking and registration of motor vehicles.

(a) Except as otherwise provided in this Part, all of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State and the operation of motor vehicles thereon are applicable to all streets, alleys, driveways, parking lots, and parking structures on University property. Nothing in this section modifies any rights of ownership or control of University property, now or hereafter vested in the Board of Governors of the University of North Carolina or the State of North Carolina.

(b) Each board of trustees may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic and the parking of motor vehicles and other modes of conveyance on the campus. In fixing speed limits, the board of trustees is not subject to G.S. 20-141(f1) or (g2), but may fix any speed limit reasonable and safe under the circumstances as conclusively determined by the board of trustees. The board of trustees may not regulate traffic on streets open to the public as of right, except as specifically provided in this Part.

(c) Each board of trustees may by ordinance provide for the registration of motor vehicles maintained or operated on the campus by any student, faculty member, or employee of the University, and may fix fees for such registration. The ordinance may make it unlawful for any person to operate an unregistered motor vehicle on the campus when the vehicle is required by the ordinance to be registered.

(d) Each board of trustees may by ordinance set aside parking lots and other parking facilities on the campus for use by students, faculty, and employees of the University and members of the general public attending schools, conferences, or meetings at the University, visiting or making use of any University facilities, or attending to official business with the University. The board of trustees may issue permits to park in these lots and garages and may charge a fee therefor. The board of trustees may also by ordinance make it unlawful for any person to park a motor vehicle in any lot or other parking facility without procuring the requisite permit and displaying it on the vehicle. No permit to park shall be issued until the student requesting the permit provides the name of the insurer, the policy number under which the student has financial responsibility, and the student certifies that the motor vehicle is insured at the levels set in G.S. 20-279.1(11) or higher. This subsection applies to motor vehicles that are registered in other states as well as motor vehicles that are registered in this State pursuant to Chapter 20 of the General Statutes.

(e) Each board of trustees may by ordinance set aside spaces in designated parking areas or facilities in which motor vehicles may be parked for specified periods of time. To regulate parking in such spaces, the board of trustees may install a system of parking meters and make it unlawful for any person to park a motor vehicle in a metered space without activating the meter for the entire time that the vehicle is parked, up to the maximum length of time allowed for that space. The meters may be activated by coins of the United States. The board of trustees may also install automatic gates, employ attendants, and use any other device or procedure to control access to and collect the fees for using its parking areas and facilities.

(f) The board of trustees may by ordinance provide for the issuance of stickers, decals, permits, or other indicia representing the registration status of vehicles or the eligibility of vehicles to park on the campus and may by ordinance prohibit the forgery, counterfeiting, unauthorized transfer, or unauthorized use of them.

(g) Violation of an ordinance adopted under any portion of this Part is an infraction as defined in G.S. 14-3.1 and is punishable by a penalty of not more than fifty dollars ($50.00). An ordinance may provide that certain prohibited acts shall not be infractions and in such cases the provisions of subsection (h) may be used to enforce the ordinance.

(h) An ordinance adopted under any portion of this Part may provide that violation subjects the offender to a civil penalty. Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged. Each board of trustees may establish procedures for the collection of these penalties and they may be enforced by civil action in the nature of debt. The board of trustees may also provide for appropriate administrative sanctions if an offender does not pay a validly due penalty or upon repeated offenses. Appropriate administrative sanctions include, but are not limited to, revocation of parking permits, termination of vehicle registration, and termination or suspension of enrollment in or employment by the University.

(i) An ordinance adopted under any portion of this Part may provide that any vehicle illegally parked may be removed to a storage area. Regardless of whether a constituent institution does its own removal and disposal of motor vehicles or contracts with another person to do so, the institution shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the institution operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the institution operates in such a way that it is responsible for collecting towing fees, it shall:
  a. Provide by contract or ordinance for a schedule of reasonable towing fees,
  b. Provide a procedure for a prompt fair hearing to contest the towing,
  c. Provide for an appeal to district court from that hearing,
  d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
  e. If the institution chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the institution may destroy it.

(j) Evidence that a motor vehicle was found parked or unattended in violation of an ordinance of the board of trustees is prima facie evidence that the vehicle was parked by:

(1) The person holding a University parking permit for the vehicle, or
(2) If no University parking permit has been issued for the vehicle, the person in whose name the vehicle is registered with the University pursuant to subsection (c), or
(3) If no University parking permit has been issued for the vehicle and the vehicle is not registered with the University, the person in whose name it is registered with the North Carolina Division of Motor Vehicles or the corresponding agency of another state or nation.

The rule of evidence established by this subsection applies only in civil, criminal, or administrative actions or proceedings concerning violations of ordinances of the board of trustees. G.S. 20-162.1 does not apply to such actions or proceedings.

(k) Each board of trustees shall cause to be posted appropriate notice to the public of applicable traffic and parking restrictions.

(*l*) All ordinances adopted under this Part shall be recorded in the minutes of the board of trustees and copies thereof shall be filed in the offices of the President of the University of North Carolina and the Secretary of State. Each board of trustees shall provide for printing and distributing copies of its traffic and parking ordinances.

(m) All moneys received pursuant to this Part, except for the clear proceeds of all civil penalties collected pursuant to subsection (h) of this section, shall be placed in a trust account in each constituent institution, are appropriated, and may be used for any of the following purposes:

(1) To defray the cost of administering and enforcing ordinances adopted under this Part;
(2) To develop, maintain, and supervise parking areas and facilities;
(3) To provide bus service or other transportation systems and facilities, including payments to any public or private transportation system serving University students, faculty, or employees;
(4) As a pledge to secure revenue bonds for parking facilities issued under Article 21 of this Chapter;
(5) Other purposes related to parking, traffic, and transportation on the campus.

The clear proceeds of all civil penalties collected pursuant to subsection (h) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 495, s. 1; 1975, c. 716, s. 5; 1981 (Reg. Sess., 1982), c. 1239, s. 3; 1983, c. 420, s. 5; 1985, c. 764, s. 36; 2001-336, s. 1; 2005-276, s. 6.37(r); 2006-203, s. 51.)

Editor's Note. — The section is set out in the supplement to correct an error in the main volume.

Article 4.

University of North Carolina School of the Arts.

§ 116-63. Policy.

Editor's Note. — Session Laws 2008-192, s. 13(a), provides: "All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of the North Carolina School of the Arts remain those of the University of North Carolina School of the Arts."

Session Laws 2008-192, s. 13(b), provides: "Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina School of the Arts, as they existed prior to the enactment of this act. The University of North Carolina School of the Arts shall use funds within its budget to replace these items, as necessary."

§ 116-64. Establishment of school.

There is hereby established, and there shall be maintained, a school for the professional training of students having exceptional talent in the performing arts which shall be defined as an educational institution of the State, to serve the students of North Carolina and other states, particularly other states of the South. The school shall be designated the "North Carolina School of the Arts, redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts.'" (1963, c. 1116; 1971, c. 1244, s. 13; 2008-192, s. 7.)

Effect of Amendments. — Session Laws 2008-192, s. 7, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" at the end of the paragraph.

§ 116-65. To be part of University of North Carolina; membership of Board of Trustees.

The North Carolina School of Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," is a part of the University of North Carolina and subject to the provisions of Article 1, Chapter 116, of the General Statutes; provided, however, that notwithstanding the provisions of G.S. 116-31, the Board of Trustees of said school shall consist of 15 persons, 13 of whom are selected in accordance with provisions of G.S. 116-31, and the conductor of the North Carolina Symphony, or the conductor's designee, and the Secretary of the Department of Cultural Resources, both serving ex officio and nonvoting. (1963, c. 1116; 1971, c. 320, s. 4; c. 1244, s. 13; 1979, c. 562; 2003-215, s. 1; 2008-192, s. 8.)

Effect of Amendments. — Session Laws 2008-192, s. 8, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" near the beginning of the section.

ARTICLE 5C.

North Carolina Principal Fellows Program.

§ 116-74.41. North Carolina Principal Fellows Commission established; membership.

Editor's Note. —

Session Laws 2008-107, s. 9.4(a) and (b), as amended by Session Laws 2008-118, s. 1.4, provides: "(a) The North Carolina Principal Fellows Commission in collaboration with the State Education Assistance Authority shall make available an optional six-month scholarship in the amount of twenty thousand dollars ($20,000) to any person who was a recipient of a scholarship loan through the Principal Fellows Program and who: (i) was in Class 10 of the Principal Fellows Program for the 2003-2004 academic year, (ii) completed the Principal Fellows Program, and (iii) has either served as a school administrator for four years at a North Carolina public school or at a school operated by the United States as required by G.S. 116-74.43, or who has had the loan forgiven by the State Education Assistance Authority pursuant to G.S. 116-74.43. A person may be eligible for the optional six-month scholarship only after fulfilling all contractual obligations agreed to by the person upon receipt of the original scholarship loan awarded to the person under G.S. 116-74.42. Exclusive of any deferment for extenuating circumstances, a person remains eligible for the optional six-month scholarship for two years after the six-year period of time allowed the person to satisfy the original scholarship loan requirements under G.S. 116-74.43. Should a person present extenuating circumstances, the State Education Assistance Authority may extend the period of time for which a person remains eligible for the optional six-month scholarship for a reasonable time period.

"(b) The Principal Fellows Commission shall develop the criteria for awarding the scholarship. In developing the criteria, the Commission shall require that the person agree to work at least another six months as a school administrator in a North Carolina public school or at a school operated by the United States after satisfying the four-year work requirement set out in G.S. 116-74.43. The Commission, in collaboration with the State Education Assistance Authority, shall develop a process for evaluating a scholarship recipient's work performance and for issuing a final approval and certification of the work performance. The Commission shall transfer to the State Education Assistance Authority the name of each recipient that it certifies as successfully completing the optional scholarship program. The State Education Assistance Authority shall pay the twenty thousand dollar ($20,000) scholarship to the scholarship recipient within a reasonable time of receiving notification from the Commission that the recipient has successfully completed the optional scholarship program. The State Education Assistance Authority shall perform all of the administrative functions necessary to implement this act, including rule making."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 116-74.43. Terms of loans; receipt and disbursement of funds.

(a) **(Effective until January 1, 2009)** All scholarship loans shall be evidenced by notes made payable to the State Education Assistance Authority that bear interest at the rate of ten percent (10%) per year beginning 90 days after completion of the school administrator program, or 90 days after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated upon the recipient's withdrawal from school or by the recipient's failure to meet the standards set by the Commission.

(a) **(Effective January 1, 2009)** All scholarship loans shall be evidenced by notes made payable to the State Education Assistance Authority that bear

G.S. 116-74.43(a) is set out twice. See note.

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interest at a rate not to exceed ten percent (10%) per year as set by the Authority and beginning 90 days after completion of the school administrator program, or 90 days after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated upon the recipient's withdrawal from school or by the recipient's failure to meet the standards set by the Commission.

(b) The State Education Assistance Authority shall forgive the loan and any interest accrued on the loan if, within six years after graduation from a school administrator program, exclusive of any authorized deferment for extenuating circumstances, the recipient serves for four years as a school administrator at a North Carolina public school or at a school operated by the United States government in North Carolina. The SEAA shall also forgive the loan if it finds that it is impossible for the recipient to work for four years, within six years after completion of the two-year school administrator program supported by the scholarship loan at a North Carolina public school, or at a school operated by the United States government in North Carolina, because of the death or permanent disability of the recipient. If the recipient repays the scholarship loan by cash payments, all indebtedness shall be repaid within 12 years after completion of the two-year school administrator program supported by the scholarship loan. If the recipient completes the school administrator program, payment of principal and interest shall begin no later than 27 months after the completion of the program. Should a recipient present extenuating circumstances, the State Education Assistance Authority may extend the period to repay the loan in cash to no more than a total of 15 years.

(c) All funds appropriated to, or otherwise received by, the Principal Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in a university trust fund. This university trust fund may be used only for scholarship loans granted under the Principal Fellows Program and administrative costs associated with the recovery of funds advanced under the program. (1993, c. 321, s. 85(a); 1993 (Reg. Sess., 1994), c. 677, s. 12(a); 2008-204, s. 5.3.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until January 1, 2009. The second version of subsection (a) set out above is effective January 1, 2009.

Editor's Note. — Session Laws 2008-204, s. 5.4, provides: "This section becomes effective January 1, 2009, and applies to all scholarship loans issued on and after July 1, 2009."

Effect of Amendments. — Session Laws 2008-204, s. 5.3, substituted "a rate not to exceed ten percent (10%) per year as set by the Authority and" for "the rate of ten percent (10%) per year" in the first sentence of subsection (a). For effective date and applicability, see Editor's note.

Article 23.

State Education Assistance Authority.

§ 116-209.19. Grants to students.

The Authority is authorized to make grants to eligible students enrolled or to be enrolled in eligible institutions in North Carolina out of such money as from time to time may be appropriated by the State or as may otherwise be available to the Authority for such grants. The Authority, subject to the provisions of this Article and any applicable appropriation act, shall adopt rules, regulations and procedures for determining the needs of the respective students for grants and for the purpose of making such grants. The amount of any grant made by the Authority to any student, whether enrolled or to be enrolled in any private institution or any tax-supported public institution, shall be determined by the Authority upon the basis of substantially similar standards and guides that shall be set forth in the Authority's rules, regulations and procedures; provided, however, that grants made in any fiscal year to students enrolled or to be enrolled in private institutions may be increased to compensate, in whole or in part, for the average annual State appropriated tuition subsidy for such fiscal year, determined as provided herein. The average annual State appropriated subsidy for each fiscal year shall be determined by the Secretary of Administration, after consultation with the Board of Governors of the University of North Carolina and the Authority, for each of the two categories of tax-supported institutions, being (i) institutions, presently 16, that provide education of the collegiate grade and grant baccalaureate degrees and (ii) institutions, such as community colleges and technical institutes created and existing under Chapter 115A of the General Statutes and community colleges created and existing under Chapter 115D of the General Statutes. The average annual State appropriated subsidy for each of such two categories of institutions shall mean the amount of the total appropriations of the State for the respective fiscal years under the current operations budgets, pursuant to the State Budget Act reasonably allocable to undergraduate students enrolled in such institutions exclusive of the Division of Health Affairs of the University of North Carolina and the North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts" for all institutions in such category, all as shall be determined by the Secretary of Administration after consultation as above provided, divided by the budgeted number of North Carolina undergraduate students to be enrolled in such fiscal year.

The Authority, in determining the needs of students for grants, may among other factors, give consideration to the amount of other financial assistance that may be available to the students, such as nonrepayable awards under the Pell Grant Program, the Health Professions Education Assistance Act or other student assistance programs created by federal law. (1971, c. 392, s. 11; c. 1244, s. 14; 1975, c. 879, s. 46; 1979,c. 165, s. 9; 1983, c. 717, s. 35; 1985 (Reg. Sess., 1986), c.955, ss. 38, 39; 1987, c. 227, s. 8; c. 564, s. 23; 2006-203, s. 54; 2008-192, s. 9.)

Effect of Amendments. —
Session Laws 2008-192, s. 9, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" near the end of the first paragraph.

§ 116-209.26. Education Access Rewards North Carolina Scholars Fund.

(a) The following definitions apply to this section:

(1) Academic year. — A period of time in which a student in matriculated status is expected to complete the equivalent of at least two semesters' or three quarters' academic work.

(2) Eligible postsecondary institution. — A school that is any of the following:

a. A constituent institution of The University of North Carolina as defined in G.S. 116-2(4);

b. A community college as defined in G.S. 115D-2(2); or

c. An institution as defined in G.S. 116-22(1).

(3) Matriculated status. — Being recognized as a first-time candidate for a degree or certificate, exclusive of any course credits earned while in

high school, in a defined program of study at an eligible postsecondary institution.

(4) Title IV. — Title IV of the Higher Education Act of 1965, as amended.

(b) There is established the Education Access Rewards North Carolina Scholars Fund. The purpose of the Fund is to provide grants to certain eligible students to enable them to obtain an education beyond the high school level at certain postsecondary institutions in North Carolina without incurring student loans to meet their financial need during the first two years of their postsecondary education. The State Education Assistance Authority (SEAA) shall administer the Fund.

(c) Criteria for awarding the grants shall be developed by the SEAA and include all of the following:

(1) The student must qualify as a legal resident of North Carolina, a legal resident of the United States, and as a resident for tuition purposes in accordance with G.S. 116-143.1.

(2) Within seven months of the fiscal year in which the grant is to be disbursed, the student must have:

a. Graduated from a North Carolina high school;

b. Received a General Education Development (GED) certificate from a North Carolina institution; or

c. Completed a high school education in a home school setting meeting the qualifications and requirements under G.S. 115C-564.

(3) The student must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status on a full-time basis at an eligible postsecondary institution in North Carolina.

(4) The student must be an eligible dependent student. For purposes of this subdivision, an "eligible dependent student" is a student who:

a. Either is classified as dependent for the Title IV programs or is a ward or dependent of the court; and

b. Demonstrates total family income not exceeding two hundred percent (200%) of the applicable federal poverty guideline, according to standards set by the SEAA and measured using data elements available to the SEAA from the Free Application for Federal Student Aid (FAFSA) or such other source as the SEAA may deem appropriate.

(5) The student must meet all other eligibility requirements for the federal Pell Grant.

(6) In order to retain eligibility for a grant for the student's second academic year, the student must meet achievement standards by maintaining satisfactory academic progress in a course of study in accordance with the standards and practices used for Title IV programs by the eligible postsecondary institution in which the student is enrolled.

(7) The student may not receive a grant in an amount that, when combined with the federal Pell Grant, exceeds the student's cost of attendance as defined under Title IV.

(8) The student may not receive a grant under this section for more than the equivalent of two academic years.

(d) The maximum grant for which a student is eligible under this section shall be four thousand dollars ($4,000) per academic year. In the event there are not sufficient funds to provide each eligible student with the maximum grant, it is the intent of the General Assembly that eligible students who have matriculated into an eligible postsecondary institution in North Carolina with at least one academic year of college credit receive the maximum grant amount and all other eligible students shall receive a reduced grant amount.

(e) The grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the SEAA not inconsistent with this section.

(f) The State Education Assistance Authority shall report to the Joint Legislative Education Oversight Committee by December 1, 2009, and by each December 1 thereafter, regarding the Fund and grants awarded from the Fund.

(g) Grant funds unexpended shall remain available to the SEAA for future grants to be awarded under this section.

(h) No funds appropriated from the Escheat Fund to the Education Access Rewards North Carolina Scholars Fund shall be used for a grant awarded under this section to a student who is an undergraduate student at an institution as defined in G.S. 116-22(1); however, funds appropriated from the General Fund to the Education Access Rewards North Carolina Scholars Fund may be used for a grant awarded under this section to a student who is an undergraduate student at an institution as defined in G.S. 116-22(1). (2007-323, s. 9.7(a); 2008-107, s. 9.2(a), (b).)

Editor's Note. —

Session Laws 2007-323, s. 9.7(b)-(d), as amended by Session Laws 2008-107, s. 9.2 (c) and (d), and as amended by Session Laws 2008-118, s. 1.3(f), provides: "(b) There is appropriated from the General Fund to the State Education Assistance Authority the sum of twenty-seven million six hundred five thousand two hundred ten dollars ($27,605,210) for the 2007-2008 fiscal year. Of the funds appropriated by this act to the Board of Governors of The University of North Carolina for the 2008-2009 fiscal year the sum of sixteen million two hundred twenty-five thousand dollars ($16,225,000) shall be allocated to the Education Access Rewards North Carolina Scholars Fund (EARN).

"(c) There is appropriated from the Escheat Fund to the State Education Assistance Authority the sum of fifty million dollars ($50,000,000) for the 2008-2009 fiscal year.

"(d) The Director of the Budget shall include the amount necessary to fully fund the EARN grants for all eligible students in the 2009-2011 continuation budget."

Session Laws 2008-107, s. 9.9, provides: "Effective June 30, 2008, the unencumbered balance of the funds appropriated in 2007-2008 to The University of North Carolina Board of Governors and the State Education Assistance Authority in Section 9.7 of S.L. 2007-323 shall revert to the General Fund. The amount reverted shall be no less than twenty-seven million six hundred five thousand two hundred ten dollars ($27,605,210)."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, ss. 9.2(a) and (b), effective July 1, 2008, and applicable for academic years beginning on or after July 1, 2008, made minor grammatical changes in subdivisions (a)(2)a and (a)(2)b, added "any of the following" at the end of subdivision (a)(2)a; added subdivision (a)(2)c; and added subsection (h).

§ **116-209.36:** Repealed by Session Laws 2008-107, s. 9.1(a), effective July 1, 2008.

Editor's Note. — Session Laws 2008-107, s. 9.1(b), provides: "All financial obligations to any student awarded a scholarship loan from the Coaching Scholarship Loan Fund before July 1, 2008, shall be fulfilled provided the student remains eligible under the provisions of the Coaching Scholarship Loan Fund. All contractual agreements between a student awarded a scholarship loan from the Coaching Scholarship Loan Fund before July 1, 2008, and the State Education Assistance Authority remain enforceable and the provisions of G.S. 116-209.36 that would be applicable but for this section shall remain applicable with regard to any scholarship loan awarded before July 1, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 33.

Airport Authorities.

§ 116-271. General provisions.

(a) As provided by G.S. 116-11(12c), the Board of Governors may create one airport authority to support the missions of the University of North Carolina at Chapel Hill or the University of North Carolina Health Care System. An authority so created shall be a political subdivision of the State. The territorial jurisdiction of the authority shall be the county in which the airport may be established under subsection (c) of this section.

(b) To create an airport authority under this Article, the Board of Governors by resolution shall:

(1) Name the authority.
(2) Describe the input from affected local jurisdictions.
(3) Consider eligibility for State and federal funding.
(4) Find that the authority is essential to support the missions of The University of North Carolina.

(c) An airport established under this Article may only be established in Orange County. The sole purpose of the authority is to resite Horace Williams Airport and operate the resited airport.

(d) No member of the General Assembly may serve on an airport authority created under this Article. (2008-204, s. 4.2.)

Editor's Note. — Session Laws 2008-204, s. 7, made this Article effective August 8, 2008.

§ 116-272. Single or multi-institution authority membership.

(a) Where an airport authority is created to support the mission of the University of North Carolina at Chapel Hill, it shall consist of 15 members appointed as follows:

(1) One member shall be appointed by the General Assembly for a three-year term upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121;
(2) One member shall be appointed by the General Assembly for a three-year term upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;
(3) Eight members shall be appointed to three-year terms by the Board of Governors upon recommendation of the Board of Trustees of the University of North Carolina at Chapel Hill, provided that four of the initial members so appointed shall serve terms of three years and four shall serve terms of two years;
(4) Three members shall be appointed by the board of commissioners of the county having territorial jurisdiction over the authority as provided by subsection (b) of this section; and

(5) Two members shall be appointed by the municipalities within that county as provided by subsection (c) of this section.

An airport authority may also be created to support the mission of one constituent institution and the University of North Carolina Health Care System. If the airport authority is created to support the mission of one constituent institution and the University of North Carolina Health Care System, then the eight members appointed by the Board of Governors shall include an equal number of representatives of the constituent institution and the University of North Carolina Health Care System. If it is impossible to appoint an equal number from each, then the Board of Governors shall determine a fair representation on the airport authority from each such entity.

(b) The board of commissioners of the county with territorial jurisdiction over the authority shall appoint three members. One of the initial members shall be appointed for a one-year term, one for a two-year term, and one for a three-year term. Successors shall be appointed for three-year terms.

(c) The municipality with the largest population within the county having territorial jurisdiction over the authority based on the most recent decennial federal census shall appoint one member for a two-year term. The municipalities with the second and third largest populations within that county based on the most recent decennial federal census shall alternately appoint one member for a two-year term, with the second largest municipality making the initial appointment.

(d) All vacancies on the authority shall be filled by the governing board authorized to make the initial appointment, and the appointment is for the remainder of the unexpired term, except that vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. (2008-204, s. 4.2.)

§ 116-273. UNC Health Care System authority membership.

(a) Where an airport authority is created to support the mission of the University of North Carolina Health Care System, it shall consist of 15 members appointed as follows:

(1) One member shall be appointed by the General Assembly for a three-year term upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121;

(2) One member shall be appointed by the General Assembly for a three-year term upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;

(3) Eight members shall be appointed to three-year terms by the Board of Directors, provided that four of the initial members so appointed shall serve terms of three years and three shall serve terms of two years;

(4) Three members shall be appointed by the board of commissioners of the county or counties having territorial jurisdiction over the authority as provided by subsection (b) of this section; and

(5) Two members shall be appointed by the municipalities within that county as provided by subsection (c) of this section.

(b) The board of commissioners of the county with territorial jurisdiction over the authority shall appoint three members. One of the initial members shall be appointed for a one-year term, one for a two-year term, and one for a three-year term. Successors shall be appointed for three-year terms.

(c) The municipality with the largest population within the county having territorial jurisdiction over the authority based on the most recent decennial federal census shall appoint one member for a two-year term. The municipalities with the second and third largest populations within that county based on the most recent decennial federal census shall alternately appoint one member for a two-year term, with the second largest municipality making the initial appointment.

(d) All vacancies on the authority shall be filled by the governing board authorized to make the initial appointment, and the appointment is for the remainder of the unexpired term, except vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. (2008-204, s. 4.2.)

§ 116-274. General powers.

(a) An authority created under this Article has all powers that a city or county has under Articles 1 through 7 of Chapter 63 of the General Statutes and, in regard to financing capital expenditures and operations, shall have such powers as are delegated to or conferred upon the constituent institutions or the University of North Carolina Health Care System. Notwithstanding other provisions of law, both regulations adopted by an authority under this Article and development regulations adopted by a county or municipality under Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes shall be applicable to land owned by and the approaches to land owned by an authority created under this Article. In the event the regulations conflict, the more restrictive regulation applies.

(b) In addition to the powers granted by subsection (a) of this section, an authority created under this Article has the following powers:

(1) To sue and be sued in the name of the airport authority, and all pleadings served upon the airport authority shall be served on the chairperson or secretary of the airport authority.

(2) To expend funds appropriated to it from time to time for airport purposes and to expend funds received by the authority from fees, charges, rents, and dues arising out of the operation of the airport, the facilities, improvements, and concessions located thereat or operated thereon.

(3) To establish, construct, control, lease, maintain, improve, operate, and regulate an airport on lands acquired by it with buildings necessary to accommodate all types of business to operate an airport, runways, taxi ramps, parking ramps, and any equipment to operate an airport, to have complete authority for rules and regulations over all airport property for the control of all types of vehicular traffic, mobile or stationary, and pedestrian traffic with respect to areas or roadways not under the control of the Department of Transportation and any rules adopted by the airport authority for property exclusively under its control, and to have conjunctive authority to work with and cooperate with all duly constituted law enforcement agencies to enforce rules established by the State of North Carolina. The penalty for violation of rules established by the airport authority shall be a Class 3 misdemeanor and, upon conviction, shall be punishable by a fine not to exceed fifty dollars ($50.00) or imprisonment not to exceed 30 days. All rules and regulations so adopted by the airport authority shall be recorded by delivering true copies thereof certified by the chairperson and secretary of the authority to the Secretary of the Board of Governors and to the Secretary of State.

(4) The authority may acquire by purchase or gift any property for the purpose of establishing, extending, enlarging, or improving an airport. The authority does not possess the power of eminent domain over property held on July 1, 2008 by a tax-exempt Internal Revenue Code section 501(c)(3) organization organized for educational pur-

poses. In all other cases, the authority possesses the power of eminent domain and may acquire property by eminent domain for the purpose of establishing, extending, enlarging, or improving an airport. In cases where the authority may exercise the power of eminent domain, the authority is declared to be a local public condemnor under the provisions of Chapter 40A of the General Statutes and in exercising the powers of eminent domain shall follow the procedures of Article 3 of Chapter 40A of the General Statutes. Title to the property and the right of immediate possession shall vest pursuant to subsection (a) of G.S. 40A-42. If property acquired by condemnation contains a burial ground or graveyard, then it shall be lawful for the airport authority after 30 days' notice to the surviving spouse, or the next of kin of the deceased buried therein, or the person in control of the graves, if any are known, to remove the body interred therein and reinter the same in some cemetery in the same county. If no surviving spouse or next of kin or person in control can be found, then the airport authority can advertise for four consecutive weeks in a newspaper published in the county of the intended removal of the gravesite, and the removal shall be conducted under the supervision of the clerk of the superior court for that county or his or her representative, and the expense of such removal shall be borne by the airport authority. The airport authority may dispose of any real or personal property belonging to it according to the procedures described in Article 12 of Chapter 160A of the General Statutes.

(5) To lease to other entities for a term not to exceed 20 years and for purposes not inconsistent with airport purposes or usage, real or personal property or both, under the supervision of or administered by the airport authority.

(6) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of passenger and freight flights, scheduled or nonscheduled, and any other plane or flight activities not inconsistent with airport operations and to charge and collect reasonable fees, charges, and rents for the use of such property and services rendered in the operation thereof.

(7) To operate, own, control, regulate, lease, or grant to others the license to operate amusements or concessions for a term not exceeding 20 years.

(8) To enter into contracts to pledge as security the property of the airport authority.

(9) To pledge any lease agreement to which it is a party as security for any loan.

(10) To adopt and use a seal.

(11) To contract with the Federal Aviation Administration of the United States of America or with the State of North Carolina or with any of the agencies or representatives of either of said governmental bodies relating to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities, or both.

(12) To receive refunds of sales and use taxes under G.S. 105-164.14(c).

(13) To accept grants, loans, or contributions from the United States, the State of North Carolina, or any agency or instrumentality of either of them, or from any county or other municipality, and to expend the proceeds for any purposes of the authority.

(14) To accept grants, loans, or contributions from nonprofit organizations and to expend the proceeds for any purposes of the authority.

(15) To adopt organizational bylaws that shall include, but not be limited to, provision for election, duties, and terms of a Chair and Secretary.

(16) To borrow money in accordance with Article V of Chapter 159 of the General Statutes, provided that all powers and duties conferred on the Local Government Commission shall for purposes of this section be held by the Board of Governors.

(c) The authority shall enjoy governmental immunity, however, the authority may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligence or intentional damage to persons or property or against absolute liability for damage to persons or property caused by an act or omission of the authority or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. The members of the authority shall determine what liabilities and what officers, agents, and employees shall be covered by any insurance purchased pursuant to this provision.

Purchase of insurance pursuant to this provision waives the authority's governmental immunity to the extent of insurance coverage for any act or omission occurring in the exercise of a governmental function. By entering into an insurance contract with the authority, an insurer waives any defense based upon the governmental immunity of the authority.

If the authority has waived its governmental immunity pursuant to the foregoing provisions of this section, any person, or if he dies, his personal representative, sustaining damages as a result of an act or omission of the authority or any of its officers, agents, or employees occurring in the exercise of a governmental function, may sue the authority for recovery of damages. To the extent of the coverage of insurance purchased pursuant to this section, governmental immunity may not be a defense to the action. Otherwise, however, the authority has all defenses available to private litigants in any action brought pursuant to these provisions without restriction, limitation, or other effect whether the defense arises from common law or by virtue of a statute. (2008-204, s. 4.2.)

§ 116-275. Cessation of operation.

In the event of cessation of the operation of an airport established under this Article, or the abandonment of any of the property acquired hereunder for airport purposes, the title to such real or personal property or rights under any existing lease shall vest in The University of North Carolina, and upon the sale of any property after cessation of operations, the proceeds therefrom shall first be distributed pro rata to the constituent university member or to the University of North Carolina Health Care System to reimburse their or their affiliated foundations' investments in the authority and thereafter shall vest in the University. (2008-204, s. 4.2.)

Chapter 116B.

Escheats and Abandoned Property.

Article 1.

Escheats.

§ 116B-7. Distribution of fund.

CASE NOTES

Cited in Rowlette v. State, — N.C. App. —, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

Article 4.

North Carolina Unclaimed Property Act.

§ 116B-52. Definitions.

CASE NOTES

Cited in Rowlette v. State, — N.C. App. —, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-53. Presumptions of abandonment.

CASE NOTES

Cited in Rowlette v. State, — N.C. App. —, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-55. Contents of safe deposit box or other safekeeping depository.

CASE NOTES

Cited in Rowlette v. State, — N.C. App. —, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-61. Payment or delivery of abandoned property.

CASE NOTES

Cited in Rowlette v. State, — N.C. App. —, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-63. Custody by State; recovery by holder; defense of holder.

CASE NOTES

Cited in Rowlette v. State, — N.C. App. —, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-64. Income or gain accruing after payment or delivery.

CASE NOTES

Retention of Interest or Income on Unclaimed Property Not a Compensable Taking. — Retention of the interest or income on unclaimed property by the State of North Carolina and its treasurer pursuant to G.S. 116B-64 of the North Carolina Unclaimed Property Act does not constitute a taking without just compensation in violation of N.C. Const., Art. I, § 19 and the Fifth and Fourteenth Amendments of the United States Constitution. Rowlette v. State, — N.C. App. —, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

Property owners whose dividends and funds had been held by the State of North Carolina and its treasurer under G.S. 116B-64 of the North Carolina Unclaimed Property Act could not claim a compensable taking of their property pursuant to N.C. Const., Art. I, § 19 and the Fifth and Fourteenth Amendments of the United States Constitution because the owners' action in failing to make any use of the property at issue, rather than the action of the State, caused the lapse of the property right and the State did not undertake any overt action to take private property from the owners. Rowlette v. State, — N.C. App. —, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-65. Public sale of abandoned property.

CASE NOTES

Cited in Rowlette v. State, — N.C. App. —, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-67. Claim for property paid or delivered to the Treasurer.

CASE NOTES

Cited in Rowlette v. State, — N.C. App. —, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

Chapter 116D.

Higher Education Bonds.

Article 1.

General Provisions.

Sec.
116D-5. Higher Education Bond Oversight Committee.

Article 1.

General Provisions.

§ 116D-1. Definitions.

Editor's Note. —

Session Laws 2000-3, s. 2, as amended by Session Laws 2001-424, s. 31.9, Session Laws 2002-126, s. 9.3, Session Laws 2003-284, s. 9.3, Session Laws 2004-124, s. 9.4, Session Laws 2006-146, ss. 3.1-3.3, Session Laws 2007-394, ss. 8 and 9, and by Session Laws 2008-204, s. 2, makes provisions for the proceeds of the University Improvement General Obligation Bonds, and Session Laws 2000-3, s. 3, makes provisions for proceeds of Community College General Obligation Bonds. See Editor's notes at G.S. 116D-6 and 116D-41.

Session Laws 2008-204, ss. 1.1 through 1.9, authorizes construction of specified improvement projects at University of North Carolina constituent institutions and the funding therefore.

Session Laws 2008-204, s. 1.6, provides: "With respect to the University of North Carolina at Chapel Hill's Research Resource Facility — Phase III capital project, East Carolina University's Athletic Facilities Expansion and Improvements capital project, and North Carolina State University's Avent Ferry Administration Center Renovation capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution."

Session Laws 2008-204, s. 1.9, provides: "With respect to the University of North Carolina at Chapel Hill's Cogeneration and Steam Infrastructure Improvements and Expansion capital project, the institution may accomplish the construction and financing of the Landfill Gas Utilization portion thereof notwithstanding the requirement in G.S. 116D-22(5) as to location of the special obligation project at the institution. The University of North Carolina at Chapel Hill may enter into any other required agreements as necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such acquisition, negotiation, and execution of such rights-of-way, easements, leases, or other required agreements therefor."

§ 116D-5. Higher Education Bond Oversight Committee.

(a) Creation and Membership. — The Higher Education Bond Oversight Committee is established. The Committee shall be located administratively in the General Assembly. The Committee shall consist of 10 members appointed as provided below. In making appointments, each appointing officer shall select members who have appropriate experience and knowledge of the issues to be examined by the Committee and shall strive to ensure geographical diversity among the membership.

(1) Three members shall be appointed by the Speaker of the House of Representatives.
(2) Three members shall be appointed by the President Pro Tempore of the Senate.
(3) Two members shall be appointed by the Chair of the Board of Governors of The University of North Carolina.
(4) Two members shall be appointed by the Chair of the State Board of Community Colleges.

(b) Terms. — Terms on the Committee are for three years and begin on January 15, except the terms of the initial members, which begin on appointment. A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

(c) Duties. — The Committee shall:

(1) Call for reports and presentations from the following parties and convene for the purpose of hearing from the following parties:
  a. The University Facilities Office of each institution of The University of North Carolina.
  b. The Facilities Office of the General Administration of The University of North Carolina.
  c. The State Construction Office of the Department of Administration.
  d. The president of each community college, or the president's designee.
  e. The Administrative and Facilities Services Section of the North Carolina Community College System Office.
  f. The State Treasurer.

(2) Analyze and prepare recommendations, based on the information received under subdivision (1) of this subsection, concerning the following issues:
  a. Whether expenditures of the proceeds from the bonds issued under the Michael K. Hooker Higher Education Facilities Financing Act, S.L. 2000-3, are in compliance with the provisions of the Michael K. Hooker Higher Education Facilities Financing Act, S.L. 2000-3.
  b. Whether the awarded contracts are consistent with the budget and scope of the approved projects.
  c. Whether changes in construction methods could enhance cost savings and promotion of on-time completion of projects.
  d. Whether the bond issuances are adequately timed to reflect cash-flow requirements of the projects.

(d) Reports. — The Committee shall report annually to the Board of Governors of The University of North Carolina, the State Board of Community Colleges, and the Joint Legislative Commission on Governmental Operations.

(e) Organization. — The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The Committee shall meet at least twice a year upon the joint call of the cochairs. A quorum of the Committee is six members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

(f) Funding. — From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Higher Education Bond Oversight Committee. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5.

(g) Staff. — The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

(h) Expiration. — The Higher Education Bond Oversight Committee terminates upon completion of all projects funded by bond proceeds issued under the Michael K. Hooker Higher Education Facilities Financing Act, S.L. 2000-3. (2000-3, s. 4(a)-(h); 2008-84, ss. 1, 2.)

Effect of Amendments. — Session Laws 2008-84, s. 1 and 2, effective July 11, 2008, substituted "annually" for "semiannually" in subsection (d); substituted "twice a year" for "once a quarter" in the second sentence of subsection (e).

ARTICLE 2.

General Obligation Bonds for Financing Capital Facilities for The University of North Carolina.

§ 116D-6. Short title.

Editor's Note. —

Session Laws 2000-3, s. 2(a), as amended by Session Laws 2001-424, s. 31.9, Session Laws 2002-126, s. 9.3, Session Laws 2003-284, s. 9.3, Session Laws 2006-146, ss. 3.1-3.3, Session Laws 2007-394, ss. 8 and 9, and by Session Laws 2008-204, s. 2, directs that the proceeds of university improvement general obligation bonds and notes, including any premium thereon, except the proceeds of university improvement general obligation bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, are to be allocated and expended for paying the cost of university capital facilities, to the extent and as provided in Article 2 of Chapter 116D of the General Statutes, as enacted by the act and subject to change as provided in the act, and sets out a schedule of allocations for each of the constituent or affiliated institutions.

Session Laws 2008-204, ss. 1.1 through 1.9, authorizes construction of specified improvement projects at University of North Carolina constituent institutions and the funding therefore.

Session Laws 2008-204, s. 1.6, provides: "With respect to the University of North Carolina at Chapel Hill's Research Resource Facility — Phase III capital project, East Carolina University's Athletic Facilities Expansion and Improvements capital project, and North Carolina State University's Avent Ferry Administration Center Renovation capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution."

Session Laws 2008-208, s. 1.9, provides: "With respect to the University of North Carolina at Chapel Hill's Cogeneration and Steam Infrastructure Improvements and Expansion capital project, the institution may accomplish the construction and financing of the Landfill Gas Utilization portion thereof notwithstanding the requirement in G.S. 116D-22(5) as to location of the special obligation project at the institution. The University of North Carolina at Chapel Hill may enter into any other required agreements as necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such acquisition, negotiation, and execution of such rights-of-way, easements, leases, or other required agreements therefor."

ARTICLE 3.

Special Obligation Bonds for Improvements to the Facilities of The University of North Carolina.

§ 116D-21. Purpose.

Editor's Note. —

Session Laws 2008-204, ss. 1.1 through 1.9, authorizes construction of specified improvement projects at University of North Carolina constituent institutions and the funding therefore.

Session Laws 2008-204, s. 1.6, provides: "With respect to the University of North Carolina at Chapel Hill's Research Resource Facility — Phase III capital project, East Carolina University's Athletic Facilities Expansion and Improvements capital project, and North Carolina State University's Avent Ferry Administration Center Renovation capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution."

Session Laws 2008-204, s. 1.9, provides: "With respect to the University of North Carolina at Chapel Hill's Cogeneration and Steam Infrastructure Improvements and Expansion capital project, the institution may accomplish the construction and financing of the Landfill Gas Utilization portion thereof notwithstanding the requirement in G.S. 116D-22(5) as to location of the special obligation project at the institution. The University of North Carolina at Chapel Hill may enter into any other required agreements as necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such acquisition, negotiation, and execution of such rights-of-way, easements, leases, or other required agreements therefor."

§ 116D-22. Definitions.

Editor's Note. —
Session Laws 2008-204, s. 1.6, provides: "With respect to the University of North Carolina at Chapel Hill's Research Resource Facility — Phase III capital project, East Carolina University's Athletic Facilities Expansion and Improvements capital project, and North Carolina State University's Avent Ferry Administration Center Renovation capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution."

Session Laws 2008-204, s. 1.9, provides: "With respect to the University of North Carolina at Chapel Hill's Cogeneration and Steam Infrastructure Improvements and Expansion capital project, the institution may accomplish the construction and financing of the Landfill Gas Utilization portion thereof notwithstanding the requirement in G.S. 116D-22(5) as to location of the special obligation project at the institution. The University of North Carolina at Chapel Hill may enter into any other required agreements as necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such acquisition, negotiation, and execution of such rights-of-way, easements, leases, or other required agreements therefor."

Chapter 117.

Electrification.

Article 2.

Electric Membership Corporations.

§ 117-16. Corporate purpose; terms and conditions of membership.

CASE NOTES

Pole attachment license is not a service. —

Common-law duty requiring electric public utility, created pursuant to G.S. 117-16, to charge reasonable and nondiscriminatory rates for electric service did not clearly apply to pole-attachment agreements and federal court would not extend North Carolina common law to hold that it did; thus, court dismissed cable provider's declaratory judgment action against electric cooperative. Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., 506 F.3d 304, 2007 U.S. App. LEXIS 25425 (4th Cir. 2007).

Chapter 119.

Gasoline and Oil Inspection and Regulation.

Article 3.

Gasoline and Oil Inspection.

Sec.
119-15. (Effective January 1, 2009) Definitions that apply to Article.
Sec.
119-18. Inspection tax and distribution of the tax proceeds.

Article 3.

Gasoline and Oil Inspection.

§ 119-15. (Effective January 1, 2009) Definitions that apply to Article.

The following definitions apply in this Article:

(1) Alternative fuel. — Defined in G.S. 105-449.130.
(2) Aviation gasoline. — Defined in G.S. 105-449.60.
(3) Dyed diesel fuel. — Defined in G.S. 105-449.60.
(4) Dyed diesel fuel distributor. — A person who acquires dyed diesel fuel from either of the following:
  a. A person who is not required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for dyed diesel fuel to be used for nonhighway purposes.
  b. Another dyed diesel fuel distributor.
(5) Gasoline. — Defined in G.S. 105-449.60.
(6) Jet fuel. — Defined in G.S. 105-449.60.
(7) Kerosene. — Defined in G.S. 105-449.60.
(8) Kerosene distributor. — A person who acquires kerosene from any of the following for subsequent sale:
  a. A supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.
  b. A kerosene supplier.
  c. Another kerosene distributor.
(9) Kerosene supplier. — Either of the following:
  a. A person who supplies both kerosene and motor fuel and, consequently, is required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.
  b. A person who is not required to be licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for kerosene to be used to fuel an airplane.
(10) Motor fuel. — Defined in G.S. 105-449.60.
(11) Person. — Defined in G.S. 105-229.90.
(12) Terminal. — Defined in G.S. 105-449.60.
(13) Terminal operator. — Defined in G.S. 105-449.60. (1937, c. 425, s. 2; 1995, c. 390, s. 19; 1995 (Reg. Sess., 1996), c. 647, s. 53; 1997-6, s. 17; 2003-349, s. 10.12; 2005-435, s. 19; 2008-134, s. 59.)

Section Set Out Twice. — The section above is effective January 1, 2009. For the section in effect until January 1, 2009, see the main volume.

Effect of Amendments. — Session Laws 2008-134, s. 59, effective January 1, 2009, added subdivisions (2) and (6); redesignated remaining subsections to order them numerically; and in subdivision (7), substituted "Defined in G.S. 105-449.60" for "Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board."

§ 119-18. Inspection tax and distribution of the tax proceeds.

(a) **(Effective until January 1, 2009)** Tax. — An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of G.S. 105-449.90.

(1) Motor fuel.
(2) Alternative fuel used to operate a highway vehicle.
(3) Kerosene.

(a) **(Effective January 1, 2009)** Tax. — An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue on the date the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue on the date the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due on the date a monthly return is due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of G.S. 105-449.90. The inspection tax on jet fuel and aviation gasoline is payable as specified by the Secretary of Revenue.

(1) Motor fuel.
(2) Alternative fuel used to operate a highway vehicle.
(3) Kerosene.
(4) Jet fuel.
(5) Aviation gasoline.

(a1) Deferred Payment. — A licensed kerosene distributor that buys kerosene from a supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes has the right to defer payment of the inspection tax until the supplier is required to remit the tax to this State or another state. A licensed

G.S. 119-18(a) is set out twice. See note.

kerosene distributor that pays the tax due a supplier licensed under that Part by the date the supplier must pay the tax to the State may deduct from the amount due a discount in the amount set in G.S. 105-449.93.

(b) Proceeds. — The proceeds of the inspection tax levied by this section shall be applied first to the costs of administering this Article and Subchapter V of Chapter 105 of the General Statutes. The remainder of the proceeds shall be credited on a monthly basis to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is at least five million dollars ($5,000,000), one-half of the remainder of the proceeds shall be credited to the Noncommercial Fund and one-half of the remainder of the proceeds shall be credited to the Commercial Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is less than this threshold amount, all of the remainder of the proceeds shall be credited to the Noncommercial Fund.

(c) No Local Tax. — No county, city, or town shall impose any inspection charge, tax, or fee, in the nature of the charge prescribed by this section, upon kerosene and motor fuel. (1917, c. 166, s. 4; C.S., s. 4856; 1933, c. 544, s. 5; 1937, c. 425, s. 5; 1967, c. 1110, s. 12; 1973, c. 476, s. 193; 1985, c. 602, s. 2; 1991, c. 636, s. 12; 1991 (Reg. Sess., 1992), c. 913, s. 12; 1993, c. 402, s. 8; 1995, c. 390, s. 23; 1995 (Reg. Sess., 1996), c. 647, s. 55; 2003-349, ss. 10.15, 10.16; 2006-162, s. 15(e); 2008-134, s. 60.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until January 1, 2009. The second version of subsection (a) set out above becomes effective January 1, 2009.

Effect of Amendments. —

Session Laws 2008-134, s. 60, effective January 1, 2009, in subsection (a), substituted "on the date" for "at the same time that" twice, substituted "on the date a monthly" for "on the same date as a monthly" in the fifth sentence, added the last sentence of the first paragraph; and added subdivisions (4) and (5).

Chapter 120.

General Assembly.

Article 1A.

Legislative Retirement System.

Sec.
120-4.22A. Post-retirement increases in allowances.

Article 5A.

Committee Activity.

120-19.4A. Requests to State Bureau of Investigation for background investigation of a person who must be confirmed by legislative action.

Article 7.

Legislative Services Commission.

120-32. Commission duties.
120-32.2. General Assembly Special Police.
120-32.3. Oath of General Assembly Special Police officers.

Article 7C.

Program Evaluation.

120-36.12. Duties of Program Evaluation Division.
120-36.13. Work plan and requests for program evaluation.

Article 8.

Elected Officers.

120-37. Elected officers; salaries; staff.

Article 12P.

Joint Legislative Elections Oversight Committee.

Sec.
120-70.140. Creation and membership of Joint Legislative Elections Oversight Committee.
120-70.141. Purpose and powers of Committee.
120-70.142. Organization of Committee.
120-70.143. Additional powers.

Article 14.

Legislative Ethics Act.

Part 3. Legislative Ethics Committee.

120-103.1. Investigations by the Committee.
120-104. Advisory opinions.

Article 16.

Legislative Appointments to Boards and Commissions.

120-123. Service by members of the General Assembly on certain boards and commissions.

Article 17.

Confidentiality of Legislative Communications.

120-131.1. Requests from legislative employees for assistance in the preparation of fiscal notes and evaluation reports.

Article 1A.

Legislative Retirement System.

§ 120-4.22A. Post-retirement increases in allowances.

(a) Retired members and beneficiaries of the Retirement System shall receive post-retirement increases in allowances on the same basis as post-retirement increases in allowances are provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System.

(b) In accordance with subsection (a) of this section, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1986, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(c) In accordance with subsection (a) of this section, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1987, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(d) In accordance with subsection (a) of this section, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1988, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(e) In accordance with subsection (a) of this section, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1989, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(f) In accordance with subsection (a) of this section, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1990, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(rr) and (ss).

(g) In accordance with subsection (a) of this section, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1992, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1992 and June 30, 1992.

(h) In accordance with subsection (a) of this section, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1993, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on January 1, 1993. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1993, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1993, and June 30, 1993.

(i) In accordance with subsection (a) of this section, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1994, shall be increased by three and one-half percent (3.5%) of the allowance payable on January 1, 1994. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1994, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1994, and June 30, 1994.

(j) In accordance with subsection (a) of this section, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1995, shall be increased by two percent (2%) of the allowance payable on January 1, 1995. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1995, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1995, and June 30, 1995.

(k) In accordance with subsection (a) of this section, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1996, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on January 1, 1996. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1996, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1996, and June 30, 1996.

(*l*) In accordance with subsection (a) of this section, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1997, shall be increased by four percent (4%) of the allowance payable on June 1, 1997. Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1997, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1997, and June 30, 1997.

(m) In accordance with subsection (a) of this section, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1998, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1998, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1998, and June 30, 1998.

(n) In accordance with subsection (a) of this section, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1999, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1999, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1999, and June 30, 1999.

(o) In accordance with subsection (a) of this section, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2000, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 2000. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2000, but before June 30, 2000, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2000, and June 30, 2000.

(p) In accordance with subsection (a) of this section, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2001, shall be increased by two percent (2%) of the allowance payable on June 1, 2001. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2001, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2001, and June 30, 2001.

(q) In accordance with subsection (a) of this section, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2002, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2002, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2002, and June 30, 2002.

(r) In accordance with subsection (a) of this section, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2003, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2003, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2003, and June 30, 2003.

(s) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2004, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2004, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2004, and June 30, 2004.

(t) In accordance with subsection (a) of this section, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2005, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2005, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2005, and June 30, 2005.

(u) In accordance with subsection (a) of this section, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2006, shall be increased by three percent (3%) of the allowance payable on June 1, 2006. Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2006, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%)

of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2006, and June 30, 2006.

(v) In accordance with subsection (a) of this section, from and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2007, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2007. Furthermore, from and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2007, but before June 30, 2007, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2007, and June 30, 2007.

(w) In accordance with subsection (a) of this section, from and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2008, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2008. Furthermore, from and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2008, but before June 30, 2008, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2008, and June 30, 2008. (1985 (Reg. Sess., 1986), c. 1014, s. 49(c); 1987, c. 738, s. 27(d); 1987 (Reg. Sess., 1988), c. 1086, s. 22(d); 1989, c. 752, s. 41(d); 1989 (Reg. Sess., 1990), c. 1077, s. 11; 1991 (Reg. Sess., 1992), c. 900, s. 53(d); 1993, c. 321, s. 74(a); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(k); 1995, c. 507, s. 7.22(c); 1996, 2nd Ex. Sess., c. 18, s. 28.21(c); 1997-443, s. 33.22(f); 1998-153, s. 21(c); 1999-237, s. 28.23(c); 2000-67, s. 26.20(f); 2001-424, s. 32.22(c); 2002-126, s. 28.8(d); 2003-284, s. 30.17(c); 2004-124, s. 31.17(c); 2005-276, s. 29.25(c); 2006-66, s. 22.18(b); 2007-323, s. 28.20(c); 2008-107, s. 26.23(c).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 26.23(c), effective July 1, 2008, added subsection (w).

ARTICLE 5.

Investigating Committees.

§ 120-19. State officers, etc., upon request, to furnish data and information to legislative committees or commissions.

Editor's Note. —

Session Laws 2008-181, ss. 37.1-37.3, provide: "37.1. The Joint Legislative Study Committee on Public School Funding Formulas may review the implementation of any modifications to school funding formulas that are enacted by the General Assembly upon the recommendation of the Committee and shall evaluate the impact of those modifications.

"37.2. The Committee may report to the General Assembly at least once a year on its activities.

"37.3. The Committee shall terminate upon completion of its evaluation of modifications to public school funding formulas."

ARTICLE 5A.

Committee Activity.

§ 120-19.1. Hearings; examination of witnesses; counsel.

Editor's Note. —
Session Laws 2008-181, ss. 37.1-37.3, provide: "37.1. The Joint Legislative Study Committee on Public School Funding Formulas may review the implementation of any modifications to school funding formulas that are enacted by the General Assembly upon the recommendation of the Committee and shall evaluate the impact of those modifications.

"37.2. The Committee may report to the General Assembly at least once a year on its activities.

"37.3. The Committee shall terminate upon completion of its evaluation of modifications to public school funding formulas."

§ 120-19.4A. Requests to State Bureau of Investigation for background investigation of a person who must be confirmed by legislative action.

The President of the Senate or the Speaker of the House may request that the State Bureau of Investigation perform a background investigation on a person who must be appointed or confirmed by the General Assembly, the Senate, or the House of Representatives. The person being investigated shall be given written notice by regular mail at least 10 days prior to the date that the State Bureau of Investigation is requested to perform the background investigation by the presiding officer of the body from which the request originated. There is a rebuttable presumption that the person being investigated received the notice if the presiding officer has a copy of the notice. The State Bureau of Investigation shall perform the requested background investigation and shall provide the information, including criminal records, to the presiding officer of the body from which the request originated. A copy of the information also shall be provided to the person being investigated. The term "background investigation" shall be limited to an investigation of a person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Chapter 138A of the General Statutes. (1987, c. 867, s. 2; 2008-213, s. 89.)

Effect of Amendments. — Session Laws 2008-213, s. 89, effective August 15, 2008, substituted "Chapter 138A of the General Statutes" for "Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985)" at the end.

§ 120-19.6. Interim committee activity; rules.

Editor's Note. — Session Laws 2008-181, ss. 41.1 through 41.7, created the Poverty Reduction and Economic Recovery Legislative Study Commission. The act provided for membership of the commission, including nonvoting ex-officio members, set out requirements of the study, and provided for expenses, staffing and duties of the Commission. Session Laws 2008-181, s. 41.7, provides for a final report and termination upon the filing of the report or the convening of the 2010 Regular Session, whichever occurs first.

Session Laws 2008-181, ss. 47.1 through 47.11, created the Epilepsy Patients and Medication Interchange Study Commission to study all facets of the issues involving the protection of epilepsy patients from medication interchange. The act provided for membership, staffing, duties, vacancies, expenses, and hiring of consultants. Session Laws 2008-181, s. 47.11 provides for a final report of findings and recommendations and termination no later than February 1, 2009.

Session Laws 2008-181, ss. 48.1 through 48.5, created the Higher Education Civic Education Study Commission to advise the State on the role of higher education in helping to strengthen and enhance the ability of colleges and universities to participate in civic engagement activities with K11w education institutions, faith-based programs or other service programs affecting the social development and literacy of school-aged children. The act provided for commission membership, powers and duties. Session Laws 2008-181, s. 48.5, provides for a final report, including any proposed legislation, and termination upon the filing of the report or the convening of the 2009 General Assembly, whichever occurs first.

Article 7.

Legislative Services Commission.

§ 120-32. Commission duties.

The Legislative Services Commission is authorized to:

(1) Determine the number, titles, classification, functions, compensation, and other conditions of employment of the joint legislative service employees of the General Assembly, including but not limited to the following departments:
  a. Legislative Services Officer and personnel.
  b. Electronic document writing system.
  c. Proofreaders.
  d. Legislative printing.
  e. Enrolling clerk and personnel.
  f. Library.
  g. Research and bill drafting.
  h. Printed bills.
  i. Disbursing and supply.
  j. Program evaluation.

  Temporary employees of the General Assembly are exempt from the provisions of G.S. 135-3(8)c., as to compensation earned in that status.

(2) Determine the classification and compensation of employees of the respective houses other than staff elected officers; however, the hiring of employees of each house and their duties shall be prescribed by the rules and administrative regulations of the respective house;

(3) Acquire and dispose of furnishings, furniture, equipment, and supplies required by the General Assembly, its agencies and commissions and maintain custody of same between sessions. It shall be a Class 1 misdemeanor for any person(s) to remove any state-owned furniture, fixtures, or equipment from the State Legislative Building for any purpose whatsoever, except as approved by the Legislative Services Commission;

(4) Contract for services required for the operation of the General Assembly, its agencies, and commissions; however, any departure from established operating procedures, requiring a substantial expenditure of funds, shall be approved by appropriate resolution of the General Assembly;

(5) a. Provide for engrossing and enrolling of bills,
  b. Appoint an enrolling clerk to act under its supervision in the enrollment and ratification of acts;

(6) a. Provide for the duplication and limited distribution of copies of ratified laws and joint resolutions of the General Assembly and forward such copies to the persons authorized to receive same,

b. Maintain such records of legislative activities and publish such documents as it may deem appropriate for the operation of the General Assembly;

(7) a. Provide for the indexing and printing of the session laws of each regular, extra or special session of the General Assembly and provide for the printing of the journal of each house of the General Assembly,

b. Provide and supply to the Secretary of State such bound volumes of the journals and session laws and of these publications in electronic format as may be required by the Secretary of State to be distributed under the provisions of G.S. 147-45, 147-46.1 and 147-48.

(8) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 40(c).

(9) To establish a bill drafting division to draft bills at the request of members or committees of the General Assembly.

(10) To select the locations for buildings occupied by the General Assembly, and to name any building occupied by the General Assembly.

(11) To specify the uses within the General Assembly budget of funds appropriated to the General Assembly which remain available for expenditure after the end of the biennial fiscal period, and to revert funds under G.S. 143C-1-2.

(12) Provide insurance to provide excess indemnity for any occurrence which results in a claim against any member of the General Assembly, as provided in G.S. 143-300.2 through G.S. 143-300.6. That insurance may not provide for any indemnity to be payable for any claim not covered by the above cited statutes, nor for any criminal act by a member, nor for any act committed by a member or former member prior to the inception of insurance.

(13) Provide insurance to provide excess indemnity for any occurrence that results in a claim against any employee, officer, or committee, subcommittee, or commission member in the legislative branch other than a member of the General Assembly, as provided in G.S. 143-300.2 through G.S. 143-300.6. That insurance may not provide for any indemnity to be payable for any claim not covered by the above cited statutes, nor for any criminal act, nor for any act committed prior to the inception of insurance. (1969, c. 1184, s. 2; 1971, c. 685, s. 2; c. 1200, s. 8; 1977, c. 802, s. 50.60; 1981 (Reg. Sess., 1982), c. 1191, s. 67; 1983 (Reg. Sess., 1984), c. 1034, s. 182; 1985, c. 479, s. 176(a), (b); 1985 (Reg. Sess., 1986), c. 1014, s. 40(c); 1993, c. 539, s. 912; 1994, Ex. Sess., c. 24, s. 14(c); 2001-424, s. 32.21A(a); 2001-513, s. 16(c); 2006-203, s. 59; 2007-78, s. 1.)

Editor's Note. — The text of this section has been set out in the supplement to correct a publishing error in the main volume.

§ 120-32.2. General Assembly Special Police.

(a) All sworn members of the General Assembly Special Police employed by the Legislative Services Office are special police officers, and have all the powers of policemen of cities, within any of the following areas of jurisdiction, while on official duty:

(1) Within those areas of the City of Raleigh and of the unincorporated parts of Wake County surrounded by the innermost right-of-way of Interstate 440.

(2) In any part of the State:
  - a. While accompanying a member of the General Assembly who is conducting, or traveling to or from, his or her official duties.
  - b. While preparing for, or providing security to, a session of either or both houses of the General Assembly, or official events directly related to that session.
  - c. While performing advance work and providing security for the protection of legislative members, staff, and the public for any meeting of a study, standing, select, or joint select committee, or any commission meeting of the General Assembly, or any state, regional, or national meetings of legislative bodies or organizations representing legislative bodies, and while accompanying a member of the General Assembly to or from any event listed in this subdivision.

(b) General Assembly Special Police officers may arrest persons outside the areas described in subsection (a) of this section when the person arrested has committed a criminal offense within any of the areas, for which the officer could have arrested the person within that area, and the arrest is made during such person's immediate and continuous flight from that area.

(c) The General Assembly Special Police officers have the exclusive authority and responsibility for enforcing the parking rules of the Legislative Services Commission. (1975, c. 145, s. 1; 1981, c. 772, s. 5; 1991 (Reg. Sess., 1992), c. 1044, s. 7(b); 2005-359, s. 1; 2008-145, s. 1.)

Effect of Amendments. — Session Laws 2008-145, s. 1, effective August 2, 2008, substituted "Special Police" for "special police" throughout the section; in subsection (a), substituted "special police officers" for "special policemen"; added subdivision (a)(2)c; and in subsection (c), substituted "Special Police officers have" for "special police has."

§ 120-32.3. Oath of General Assembly Special Police officers.

Before exercising the duties of a special police officer, each General Assembly Special Police officer shall take an oath before some officer empowered to administer oaths, and the oaths shall be filed with the Clerk of Superior Court of Wake County. The oath of office shall be as follows:

"State of North Carolina, Wake County.

"I, ______________, do solemnly swear (or affirm) that I will well and truly execute the duties of General Assembly Special Police officer in the State Legislative Building and other buildings and grounds subject to the jurisdiction of the Legislative Services Commission and in other areas designated by law, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all rules and regulations of the Legislative Services Commission concerning use of those buildings and grounds and all laws of the State of North Carolina. So help me, God.

"Sworn and subscribed to before me, this the ________ day of ____________, A.D. ________"

(1975, c. 145, s. 2; 1981, c. 772, s. 6; 2005-359, s. 2; 2008-145, s. 2.)

Effect of Amendments. — Session Laws 2008-145, s. 2, effective August 2, 2008, in the section catchline, substituted "Special Police officers" for "special police"; in the first paragraph, substituted "special police officer" for "special policeman" and "Special Police" for "special police"; and in the third paragraph, substituted "Special Police officer" for "special policeman."

Article 7C.

Program Evaluation.

§ 120-36.12. Duties of Program Evaluation Division.

The Program Evaluation Division of the Legislative Services Commission has the following powers and duties:

(1) To examine a program or an activity of a State agency and evaluate the merits of the program or activity and the agency's effectiveness in conducting the program or activity.

(2) To develop quantitative indicators for measuring the activities performed and services provided by a State agency and the extent to which the activities and services are achieving desired results.

(3) To develop unit cost measures to determine the cost of activities performed and services provided by a State agency.

(4) To determine if a program or an activity of a State agency complies with the agency's mission, as established by law.

(5) To make unannounced visits to a State agency when needed to evaluate a program or an activity of the agency.

(6) To make recommendations to improve the efficiency and effectiveness of a State agency.

(7) To determine the extent to which a State agency has implemented any of the Division's recommendations concerning the agency.

(8) To require a State agency to submit a written response to a proposed or final recommendation of the Division and to submit a written explanation of the extent to which the agency has implemented the Division's recommendations.

(9) To make periodic reports of the activities and recommendations of the Division and of any savings achieved by the implementation of its recommendations.

(10) To receive reports alleging improper activities or matters of public concern listed in G.S. 126-84. The individual making the report may, at the individual's discretion, remain anonymous. Any report received under this subdivision, in whatever form, shall not be a "public record" as defined by G.S. 132-1 and becomes available to the public only as provided in G.S. 120-131. (2007-78, s. 3; 2008-196, s. 2(a).)

Effect of Amendments. — Session Laws 2008-196, s. 2(a), effective August 8, 2008, added subdivision (10).

§ 120-36.13. Work plan and requests for program evaluation.

(a) Plan. — The Joint Legislative Program Evaluation Oversight Committee, in consultation with the Director of the Program Evaluation Division, must establish an annual work plan for the Division. The Division must adhere to this annual plan, unless the Joint Legislative Program Evaluation Oversight Committee changes the annual plan to add a new evaluation or remove a planned evaluation. Any enacted legislation that directs the Program Evaluation Division to conduct a study or an evaluation is included in the annual work plan by operation of law.

The annual work plan constitutes an information request and a drafting request made by the Committee cochairs to legislative employees under Article 17 of Chapter 120 of the General Statutes. Any document prepared by a legislative employee pursuant to the annual work plan becomes available to the public only as provided in G.S. 120-131. Any document prepared by an agency employee pursuant to a request under G.S. 120-131.1(a1) becomes available to the public only as provided in G.S. 120-131.

(b) Request. — A request to the Program Evaluation Division for an evaluation of a program or an activity of a State agency must be submitted by a member of the General Assembly. The Director of the Division must review each request in accordance with the following criteria and make a recommendation to the Joint Legislative Program Evaluation Oversight Committee on whether to amend the Division's work plan to include the requested evaluation:

(1) The work required to conduct the requested evaluation.
(2) The effect that conducting the requested evaluation will have on the Division's ability to complete its work plan.
(3) The significance of the requested evaluation compared to the evaluations to be conducted under the work plan.
(4) Any overlap between the requested evaluation and other evaluations previously conducted by the Division or another agency. (2007-78, s. 3; 2008-196, s. 1(a).)

Editor's Note. — Session Laws 2008-196, s. 3, provides: "Section 1 of this act is effective June 14, 2007. The remainder of this act is effective when it becomes law, and violations of Section 1 of this act prior to the date this act becomes law may not be grounds for disciplinary action."

Effect of Amendments. — Session Laws 2008-196, s. 1(a), in subsection (a), inserted "annual" preceding "plan" twice in the second sentence, and added the third sentence in the first paragraph, and added the second paragraph. See Editor's note for applicability and effective date.

Article 8.

Elected Officers.

§ 120-37. Elected officers; salaries; staff.

(a) At the convening of the first session of the General Assembly following each biennial election of members of the General Assembly, each house shall elect a principal clerk for a term of two years, subject to the condition that each officer shall serve at the pleasure of the house that elected him or her and until his or her successor is elected. The reading clerk and sergeant-at-arms of the Senate shall serve for terms of two years, subject to the condition that each serves at the pleasure of the Senate and until the officer's successor is elected. The reading clerk and sergeant-at-arms of the House of Representatives shall serve as provided in the rules of the House.

(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of three hundred eighty dollars ($380.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only.

(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of one hundred four thousand eighty-four dollars ($104,084) payable monthly. Each principal clerk shall also receive such additional compensation as approved by the Speaker of the House of Representatives or the President Pro Tempore of the Senate, respectively, for additional employment duties beyond those provided by the rules of their House. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph.

(d) The Legislative Services Commission may authorize additional full-time staff employees of the office of each principal clerk. The Speaker may assign to the Principal Clerk of the House additional duties for the periods between sessions and during recesses of the General Assembly. The President pro tempore of the Senate may assign to the Principal Clerk of the Senate additional duties for the periods between sessions and during recesses of the General Assembly.

(e) The principal clerks and the sergeants-at-arms may, upon authorization of the Legislative Services Commission, employ temporary assistants to prepare for each legislative session, serve during the session, and perform necessary duties following adjournment.

(f) Following adjournment sine die of each session of the General Assembly, each principal clerk shall retain in his office for a period of two years every bill and resolution considered by but not enacted or adopted by his house, together with the calendar books and other records deemed worthy of retention. At the end of two years, these materials shall be turned over to the Office of Archives and History of the Department of Cultural Resources for ultimate retention or disposition. (1969, c. 1184, s. 7; 1977, 2nd Sess., c. 1278; 1979, c. 838, s. 82; 1979, 2nd Sess., c. 1137, s. 8; 1981, c. 1127, s. 9; 1983, c. 761, s. 197; 1983 (Reg. Sess., 1984), c. 1034, s. 208; c. 1116, s. 110; 1985, c. 479, ss. 205, 207; c. 757, s. 189; 1985 (Reg. Sess., 1986), c. 1014, ss. 30, 31; 1987, c. 738, ss. 16, 17; 1987 (Reg. Sess., 1988), c. 1086, ss. 10, 11; c. 1100, s. 16(c); 1989, c. 752, ss. 27, 28; 1991, c. 756, s. 34; 1991 (Reg. Sess., 1992), c. 900, ss. 36, 37; 1993, c. 321, ss. 53, 54; 1993 (Reg. Sess., 1994), c. 769, ss. 7.6, 7.7; 1995, c. 507, ss. 7.9, 7.10; 1996, 2nd Ex. Sess., c. 18, ss. 28.7, 28.8; 1997-443, ss. 33.13, 33.14; 1998-153, ss. 10, 11; 1998-212, s. 28.7(a); 1999-237, ss. 28.7, 28.8; 2000-67, ss. 26.7, 26.8; 2001-424, ss. 32.8, 32.9; 2002-159, s. 35(f); 2004-124, ss. 31.8(b), 31.9(b); 2005-276, ss. 29.8, 29.9, 19B.1; 2005-345, s. 40; 2006-66, ss. 22.8, 22.9; 2006-203, s. 61; 2007-323, ss. 28.8, 28.9; 2008-107, ss. 26.8, 26.9.)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, ss. 26.8 and 26.9, effective July 1, 2008, substituted "three hundred eighty dollars ($380.00)" for "three hundred fifty-nine dollars ($359.00)" in subsection (b); and substituted "one hundred four thousand eighty-four dollars ($104,084)" for "one hundred one thousand two hundred ninety-eight dollars ($101,298)" in subsection (c).

Article 12D.

Environmental Review Commission.

§ 120-70.41. Commission established.

Legislative Commission on Global Climate Change. — Session Laws 2005-442, ss. 1 to 12, as amended by Session Laws 2006-73, s. 1, and as amended by Session Laws 2008-81, s.

1, provides: "Commission Established; Membership. — The Legislative Commission on Global Climate Change is hereby established. The Commission shall consist of 34 members as follows:

"(1) Nine members appointed by the President Pro Tempore of the Senate.

"(2) Nine members appointed by the Speaker of the House of Representatives.

"(3) The President of Duke Power or the President's designee.

"(4) The President of Progress Energy or the President's designee.

"(5) The President of the North Carolina Citizens for Business and Industry or the President's designee.

"(6) The President of the Manufacturers and Chemical Industry Council of North Carolina or the President's designee.

"(7) The President of the North Carolina Farm Bureau Federation or the President's designee.

"(8) The President of the North Carolina Forestry Association or the President's designee.

"(9) The Southeast Regional Director of Environmental Defense or the Regional Director's designee.

"(10) The Executive Director of the Southern Alliance for Clean Energy or the Executive Director's designee.

"(11) The Executive Director of the North Carolina Coastal Federation or the Executive Director's designee.

"(12) The Executive Director of the North Carolina Conservation Council or the Executive Director's designee.

"(13) The Dean of the Nicholas School of the Environment and Earth Sciences, Duke University, or the Dean's designee.

"(14) The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.

"(15) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.

"(16) The Director of the Carolina Environmental Program at the University of North Carolina at Chapel Hill or the Director's designee.

"(17) The Distinguished Research Professor (with expertise in sea level change), Department of Geology at East Carolina University.

"(18) The North Carolina State Climatologist.

"Cochairs. — The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

"Quorum. — A quorum of the Commission shall consist of 18 members.

"Vacancies. — Any vacancy on the Commission shall be filled by the original appointing authority.

"Purpose and Duties. — The Commission shall have the following purposes and duties:

"(1) The Commission shall conduct an in-depth examination of issues related to global climate change. This examination shall include all of the following:

"a. A review of current scientific literature on the possible natural and anthropogenic causes of global climate change.

"b. A review of actions taken by the federal government and by other states to address global warming.

"c. An examination of the emissions of greenhouse gases from within the State and the extent to which reductions in the emissions of these gases in the State, region, nation, and worldwide could be expected to affect global climate change.

"d. An evaluation of the economic opportunities for the State that may result from international, national, and State action to address global climate change and the emerging carbon market.

"e. The potential impacts of global climate change on the citizens, natural resources, and economy of the State, including agriculture, travel and tourism, recreation, coastal real estate, insurance, and other economic sectors.

"f. The costs of any action taken by the State to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.

"g. The benefits of any action taken by or within the State or other states and at the national or international levels to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.

"(2) If, in the course of its examination, the Commission determines that it would be appropriate and desirable for the State to establish a global warming pollutant reduction goal, the Commission may develop a recommended global warming pollutant reduction goal for the State.

"(3) In conducting its examination of global climate change, the Commission shall consider and integrate the findings and recommendations of the study of issues related to the development and implementation of standards and plans to control emissions of carbon dioxide required by Section 13 of S.L. 2002-4.

"(4) Based on its examination of global climate change, the Commission shall develop findings and recommendations, including any legislative proposals it determines to be appropriate, for consideration by the General Assembly.

"Additional Duties. — The Commission may work cooperatively with other state and national governments to organize a forum on global climate change, including its causes, impacts, challenges, and opportunities in the southeastern United States. The Commission may also work cooperatively with other State agencies with respect to the agencies' areas of responsibilities regarding greenhouse gas emissions and climate change.

"Expenses of Members. — Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"Staff. — Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

"Consultants. — The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

"Meetings. — The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

"Reports. — The Commission may submit interim reports at its discretion. The Commission shall submit a final report, including any findings and recommendations, to the 2009 General Assembly and the Environmental Review Commission on or before 1 October 2009, at which time the Commission shall terminate.

"Funding. — From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this Part."

§ 120-70.43. Powers and duties.

Editor's Note. —

Session Laws 2008-137, ss. 1-4, provide: "Section 1. The Environmental Review Commission ("Commission") shall study the impacts on the State of the potential issuance of a new fifty-year license by the Federal Energy Regulatory Commission ("FERC") to Alcoa Power Generating, Inc., ("APGI") in the FERC relicensing proceeding known as FERC Project No. P-2197. The Commission is authorized to consider and develop proposals regarding all of the following issues:

"(1) The socioeconomic impacts of APGI's decision to discontinue its job-producing manufacturing activities at its Badin facility that relied on the use of low-cost power from the Yadkin Hydroelectric Project.

"(2) Assurance of an adequate, clean future water supply for the region.

"(3) The allocation of water for non-power uses from the Yadkin Hydroelectric Project.

"Section 2. The Commission shall submit a report to the 2009 General Assembly no later than February 1, 2009. This report shall include findings and any recommendations, including legislative proposals that would assist in implementing the recommendations.

"Section 3. Nothing in this act shall preclude the Governor or any State agency or department from taking any action necessary to protect the interest of the State in the FERC relicensing procedure known as FERC Project No. P-2197.

"Section 4. The Department of Environment and Natural Resources ("DENR") shall, to the extent allowed by State and federal statutes and rules, and without delaying its decision, consider the report submitted by the Commission under Section 2 of this act in making any decision on an application for water quality certification requested by APGI in connection with FERC relicensing of Project No. P-2197. The report submitted by the Commission under Section 2 of this act shall be included in the information necessary to trigger the 60-day time limit for the Director's decision pursuant to 15A NCAC 02H.0507(a) and shall be promptly supplied to the Director of the Division of Water Quality in DENR upon receipt by the General Assembly. Failure by the Commission to issue a report by the date specified in Section 2 will not prohibit DENR from making a final determination on such certification, nor is it the intent of the General Assembly to delay the processing by DENR of any such certification. Nothing in this act shall affect the authority of DENR to provide notices, request additional studies or information, conduct hearings, or issue or deny a 401 Water Quality Certification for FERC relicensing Project No. P-2197."

Article 12E.

Joint Legislative Transportation Oversight Committee.

§ 120-70.50. Creation and membership of Joint Legislative Transportation Oversight Committee.

Editor's Note. —

Session Laws 2008-121, s. 1, provides: "The Department of Transportation shall study issues relating to the vehicular transportation of individuals seated in wheelchairs. The study shall include reviewing appropriate methods of transporting passengers who remain seated in wheelchairs while in motor vehicles and developing guidelines for the installation and use of wheelchair tie-down systems. The Department shall report its findings and any recommendations to the North Carolina Study Commission on Aging and the Joint Legislative Transportation Oversight Committee not later than February 1, 2009."

ARTICLE 12H.

Joint Legislative Education Oversight Committee.

§ 120-70.80. Creation and membership of Joint Legislative Education Oversight Committee.

Dropout Prevention Grants. — Session Laws 2007-323, s. 7.32(a)-(f), as amended by Session Laws 2008-107, s. 7.14(a), as amended by Session Laws 2008-107, s. 7.14A, and by Session Laws 2008-181, s. 35.1, provides: "(a) Findings. — The General Assembly finds that:

"(1) North Carolina's schools recorded 22,180 dropout events in grades 9-12 for 2005-2006, a nine and nine-tenths percent (9.9%) increase from the count reported in 2004-2005. It is the highest count of dropouts since 1999-2000.

"(2) A disproportionate share of the increase in dropout rates occurred in large local school administrative units.

"(3) Black males accounted for a disproportionate amount of the increase in dropout count, and the dropout rate for black males increased to seven and one-hundredths percent (7.01%), an eight and four-tenths percent (8.4%) increase over the 2004-2005 rate.

"(4) Students drop out of school for a variety of reasons, including academic issues, family and other personal reasons, discipline issues, drug abuse, the need to work, school size, and school climate.

"(5) Students who drop out of school without graduating are more likely to be unemployed, receive public assistance, and have a higher incarceration rate than those who graduate.

"(6) In order for our citizens and State to thrive in a global, knowledge-based economy, it is imperative that more of our students graduate from high school with the knowledge and skills needed for postsecondary education or high-skilled employment.

"(7) Differing local needs and local resources necessitate the development of locally generated programs and initiatives that target dropouts and high school retention.

"(b) Purpose. — Recognizing that having an unacceptable dropout rate is not a new development in North Carolina, or in the rest of the country, and that over the years there have been, and continue to be, many programs and initiatives that have strived to address this issue, the purpose of this section is to focus attention and resources on innovative programs and initiatives that succeed in keeping students in school when other conflicting factors are pushing them to drop out before they are prepared to further their postsecondary education or enter the workforce.

"(c) Committee. — There is established the Committee on Dropout Prevention. The Committee shall be located administratively in the Department of Public Instruction but shall exercise its powers and duties independently of the Department of Public Instruction. The Department of Public Instruction shall provide for the administrative costs of the Committee and shall provide staff to the Committee.

"The Committee shall determine which local school administrative units, schools, agencies, and nonprofits shall receive dropout prevention grants under subsection (d) of this section, the amount of each grant, and eligible uses of the grant funding. The Committee shall consist of the following 15 members:

"(1) The Governor shall appoint five members, of whom one is a superintendent of schools, one is a representative of a nonprofit, and one is a school social worker;

"(2) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint five members, of whom one is a principal, one is a representative of a school of education, and one is a school counselor; and

"(3) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint five members, of whom one is a teacher, one is a member of the business community, and one is a representative of the juvenile justice system.

"The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The members of the Committee shall assure they are in compliance with laws and rules governing conflicts of interest.

"(d) Dropout Prevention Grants. — The following criteria apply to dropout prevention grants approved by the Committee established under subsection (c) of this section.

"(1) Grants shall be issued in varying amounts up to a maximum of one hundred fifty thousand dollars ($150,000).

"(2) These grants shall be provided to innovative programs and initiatives that target students at risk of dropping out of school and that demonstrate the potential to (i) be developed into effective, sustainable, and coordinated dropout prevention and reentry programs in middle schools and high schools and (ii) serve as effective models for other programs.

"(3) Priority shall be given to new programs and initiatives or to those that have begun within the last five school years.

"(4) Grants shall be distributed geographically throughout the State.

"(5) Grants may be made to local school administrative units, schools, local agencies, or nonprofit organizations.

"(6) Grants shall be to programs and initiatives that hold all students to high academic and personal standards.

"(7) Grant applications shall state (i) how grant funds will be used, (ii) what, if any, other resources will be used in conjunction with the grant funds, (iii) how the program or initiative will be coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community, and (iv) a process for evaluating the success of the program or initiative.

"(8) Programs and initiatives that receive grants under this subsection shall be based on best practices for preventing students from dropping out of school or for increasing the high school completion rate for those students who already have dropped out of school.

"(9) Priority for grants shall be given to proposals that demonstrate input from the local community and coordination with other available programs or resources.

"(10) Grantees shall assure their compliance with applicable laws and rules regulating conflicts of interest.

"(12) Grants shall be made no later than November 1, 2007.

"(e) Report. — The Committee shall report to the Joint Legislative Commission on Dropout Prevention and High School Graduation created in subsection (f) of this section by December 1, 2007, on the grants awarded under subsection (d) of this section. The Committee shall terminate on December 31, 2010.

"(f) Joint Legislative Commission on Dropout Prevention and High School Graduation. —

"(1) There is created the Joint Legislative Commission on Dropout Prevention and High School Graduation (Commission) to be composed of 16 members, eight appointed by the President Pro Tempore of the Senate and eight appointed by the Speaker of the House of Representatives. The President Pro Tempore and the Speaker shall each designate a cochair from their appointees. Vacancies shall be filled in the same manner as the original appointments were made.

"(2) The cochairs shall jointly call the first meeting of the Commission. A quorum of the Commission is a majority of its members.

"(3) The Commission shall:

"a. Evaluate initiatives and programs designed to reduce the dropout rate and increase the number of students who graduate from high school prepared to further their postsecondary education or enter the workforce.

"b. Review the research on factors related to students' success in school.

"c. Evaluate the grants awarded under subsection (d) of this section and recommend whether any of the programs and initiatives that received one of these grants has potential for success and should be expanded or replicated.

"d. Study the emergence of major middle school and high school reform efforts, including Learn and Earn Programs, the New Schools Initiative, and 21st Century Schools, and the impact they may have on the dropout rate.

"e. Examine strategies, programs, and support services that should be provided if the compulsory school attendance age is raised to enable students to graduate from high school and time lines for implementing those strategies, programs, and support services.

"f. Following a review of the courses required for graduation and the current system of awarding credit for those courses, determine whether changes should be made that better recognize the different learning rates and other needs of students.

"g. Determine which interventions and other strategies, such as accelerated learning, tutoring, mentoring, or small class sizes, when employed as a substitute to grade retention or as a subsequent measure to grade retention, are the most effective at enabling these students to remain in school and graduate.

"h. Study any other issue that the Commission considers relevant and appropriate.

"(4) The Legislative Services Commission, through the Legislative Services Officer, shall assign professional and clerical staff to assist in the work of the Joint Legislative Commission on Dropout Prevention and High School Graduation. The expenses of employment of the clerical staff shall be borne by the Joint Legislative Commission on Dropout Prevention and High School Graduation.

"(5) The Commission may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission, through the Legislative Services Officer, shall grant to the Joint Legislative Commission on Dropout Prevention and High School Graduation adequate meeting space in the State Legislative Building or the Legislative Office Building.

"(6) Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

"a. Members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;

"b. Members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6; and

"c. All other members, at the rate established in G.S. 138-5.

"(7) The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"(8) The Commission shall submit an interim written report of its findings and recommendations on or before the convening of the 2009 Session of the General Assembly. The Commission may submit an interim report, including any recommendations and proposed legislation, to the Joint Legislative Education Oversight Committee and the General Assembly by May 1, 2010, and shall submit a final written report of its findings and recommendations on or before the convening of the 2011 Session of the General Assembly. All reports shall be filed with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate."

Editor's Note. — Session Laws 2008-107, s. 7.14(b), as amended by Session Laws 2008-118, s. 1.3(c), provides: "Committee. — The Committee on Dropout Prevention, as created in Section 7.32 of S.L. 2007-323, is reestablished to determine which local school administrative units, schools, agencies, and nonprofits shall receive dropout prevention grants under this section, the amount of each grant, and eligible uses of the grant funding. When utilizing outside grant reviewers and raters, the Committee is encouraged to utilize individuals who represent public schools, universities, and community-based organizations.

"The Committee shall continue to be located administratively in the Department of Public Instruction but shall exercise its powers and duties independently of the Department of Public Instruction. The Department of Public Instruction shall provide for the administrative costs of the Committee. The Department of Public Instruction shall provide technical assistance to the grant recipients for the length of the grant.

"The members of the Committee shall assure they are in compliance with laws and rules governing conflicts of interest. The Committee shall meet on the call of the cochairs provided that the Committee shall meet at least once every three months.

"In the event of a vacancy on the Committee, the appointing authorities are encouraged to provide representation on the Committee from each of the eight educational districts as defined in G.S. 115C-65."

Session Laws 2008-107, s. 7.14(c)-(e), provided selection criteria for Dropout Prevention Grant recipients, provided criteria for Dropout Prevention Grants, and provided for the evaluation and reporting of the impact Dropout Prevention Grants awarded under Session Laws 2007-323 and 2008-107 have on dropout prevention.

Session Laws 2008-107, s. 7.14(f), provides: "Dropout Prevention Network. — In addition to its other duties, the Joint Legislative Commission on Dropout Prevention and High School Graduation, established under Section 7.32 of S.L. 2007-323, shall study the development of an effective network for the purpose of sharing best practices among the grant recipients, the public schools, and other interested organizations. The Commission shall consider interactive Web sites, electronic information sharing, professional development opportunities, conferences, and other means that it believes would be effective. The Commission may consult with the Department of Public Instruction and the Committee on Dropout Prevention. The Commission shall report its findings and any recommendations to the 2009 General Assembly."

Session Laws 2008-107, s. 7.14(g), as amended by Session Laws 2008-118, s. 1.3(b), and s. 7.14 (i) and (j) provide for specific appropriations for the Committee on Dropout Prevention. Session Laws 2008-107, s. 7.14(h) and (k), effective June 30, 2008, makes the appropriations non-reverting and provides that they shall remain available until August 31, 2009.

Session Laws 2008-107, s. 8.2(c), provides: "The Community Colleges System Office shall report by January 1, 2009, to the Joint Legislative Education Oversight Committee on the transition from the implementation phase to the ongoing operations and maintenance phase of the College Information System Project."

For similar prior provisions, see Session Laws 2007-323, s. 8.1(c).

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring

during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 12P.

Joint Legislative Elections Oversight Committee.

§ 120-70.140. Creation and membership of Joint Legislative Elections Oversight Committee.

The Joint Legislative Elections Oversight Committee is established. The Committee consists of 18 members as follows:

(1) Nine members of the Senate appointed by the President Pro Tempore of the Senate. The President Pro Tempore shall appoint members proportionally according to the partisan composition of the Senate.

(2) Nine members of the House of Representatives appointed by the Speaker of the House of Representatives. The Speaker shall appoint members proportionally according to the partisan composition of the House.

Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment and end on January 15 of the next odd-numbered year. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his or her successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (2008-150, s. 1(a).)

Editor's Note. — Session Laws 2008-150, s. 1(c), made this Article effective August 2, 2008.

Session Laws 2008-150, s. 1(b), provides: "Expenses of the Joint Legislative Elections Oversight Committee shall be paid out of funds appropriated to the General Assembly, with the approval of the Legislative Services Officer."

§ 120-70.141. Purpose and powers of Committee.

(a) The Joint Legislative Elections Oversight Committee shall examine, on a continuing basis, election administration and campaign finance regulation in North Carolina, in order to make ongoing recommendations to the General Assembly on ways to improve elections administration and campaign finance regulation. In this examination, the Committee shall do the following:

(1) Study the budgets, programs, and policies of the State Board of Elections and the county boards of elections to determine ways in which the General Assembly may improve election administration and campaign finance regulation.

(2) Examine election statutes and court decisions to determine any legislative changes that are needed to improve election administration and campaign finance regulation.

(3) Study other states' initiatives in election administration and campaign finance regulation to provide an ongoing commentary to the General Assembly on these initiatives and to make recommendations for implementing similar initiatives in North Carolina; and

(4) Study any other election matters that the Committee considers necessary to fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (2008-150, s. 1(a).)

§ 120-70.142. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Elections Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is 10 members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (2008-150, s. 1(a).)

Editor's Note. — Session Laws 2008-150, s. 1(b), provides: "Expenses of the Joint Legislative Elections Oversight Committee shall be paid out of funds appropriated to the General Assembly, with the approval of the Legislative Services Officer."

§ 120-70.143. Additional powers.

The Joint Legislative Elections Oversight Committee, while in discharge of official duties, shall have access to any paper or document and may compel the attendance of any State official or employee before the Committee or secure any evidence under G.S. 120-19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly. (2008-150, s. 1(a).)

Article 14.

Legislative Ethics Act.

Part 3. Legislative Ethics Committee.

§ 120-103.1. Investigations by the Committee.

(a) Institution of Proceedings. — On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of Chapter 138A of the General Statutes and of this Article.
(2) Repealed by Session Laws 2007-348, s. 2, effective August 9, 2007.
(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(a1) Complaints on Its Own Motion. — An investigation initiated by the Committee on its own motion instituted under subsection (a) of this section shall be treated as a complaint for purposes of this section and need not be sworn or verified.

(b) Complaint. —

(1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(3) The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.

(4) Notwithstanding any other provisions of this section, complaints filed with the Committee concerning the conduct of the Lieutenant Governor shall be referred to the State Ethics Commission under Chapter 138A of the General Statutes without investigation by the Committee.

(c) Investigation of Complaints by the Committee. — The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the referral of the complaint with the Committee, the Committee shall refer the complaint for hearing in accordance with subsection (i) of this section or initiate an investigation of a complaint or dismiss the complaint. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee may take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) On a referral from the State Ethics Commission, the Committee shall do at least one of the following:

(1) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.

(2) Conduct further investigations and hearings under this section.

(3) Dismiss the complaint.

(e) Investigation by the Committee of Matters Other Than Complaints. — The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subdivision (j)(2) of this section.

(f) Legislator Cooperation with Investigation. — Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint After Preliminary Inquiry. — If the Committee determines at the end of its preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the legislator against whom the complaint was filed.

(h) Notice. — If at the end of its preliminary inquiry, the Committee determines that probable cause exists to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee.

(i) Hearing. —

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be open to the public, except for matters that could otherwise be considered in closed session under G.S. 143-318.11, matters involving minors, or matters involving a personnel record. In any event, the deliberations by the Commission on a complaint may be held in closed session.

c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. — Except as permitted under subsections (b) and (g) of this section, after the hearing, the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.

b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which may include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. — In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment, then the Committee may make public the earlier admonishment and the records and findings related to it.

(*l*) Confidentiality. — Except as provided under subsection (k) of this section, the complaint, response, records, and findings of the Committee connected to an inquiry under this section shall be confidential and not matters of public record, except as otherwise provided in this section or when the legislator under inquiry requests in writing that the complaint, response, and findings be made public. Once a hearing under this section commences the complaint, response, Committee's report to the house, and all other documents offered at the hearing in conjunction with the complaint, not otherwise privileged or confidential under law, shall be public records. If no hearing is held, at such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response, and Committee's report to the house shall be made public.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members.

(n) The Committee shall publish annual statistics on complaints filed with or considered by the Committee, including the number of complaints filed, the number of complaints dismissed, the number of complaints resulting in admonishment, the number of complaints referred to the appropriate house for appropriate action, the number of complaints referred for criminal prosecution, and the number and age of complaints pending action by the Committee. (2006-201, s. 12; 2007-347, s. 2; 2007-348, ss. 2-4; 2008-187, s. 20; 2008-213, ss. 1(a), 3.)

Editor's Note. —

This section was amended by Session Laws 2007-348, s. 3, in the coded bill drafting format provided by G.S. 120-20.1. In sub-subdivision (i)(3)b., the 2007 amendment struck through "held in closed session unless the public servant requests that the hearing be held in open session." following "The hearing shall be," but did not strike through the word "legislator." Session Laws 2008-187, s. 20, and Session Laws 2008-213, s. 3, corrected the oversight by deleting the word "legislator" from sub-subdivision (i)(3)b.

Effect of Amendments. —

Session Laws 2008-187, s. 20, effective August 7, 2008, deleted "legislator" preceding "open to the public" in subdivision (i)(3)b.

Session Laws 2008-213, ss. 1(a) and 3, effective August 15, 2008, added subsection (a1); and deleted "legislator" preceding "open to the public" in subdivision (i)(3)b.

§ 120-104. Advisory opinions.

(a) At the request of any member of the General Assembly, the Committee shall render formal advisory opinions on specific questions involving legislative ethics.

(b) The Committee shall receive and review recommended advisory opinions issued to legislators, except the Lieutenant Governor, by the State Ethics Commission under G.S. 138A-13. The opinion shall not be considered a formal advisory opinion until the advisory opinion is adopted by the Committee. The Committee may modify or overrule the recommended advisory opinions issued to legislators by the State Ethics Commission, and the final action on the opinion by the Committee shall control.

(c) A legislator who acts in reliance on a formal advisory opinion issued by the Committee under this section shall be entitled to the immunity granted under G.S. 138A-13(b).

(d) Staff to the Committee may issue informal, nonbinding advisory opinions under procedures adopted by the Committee.

(e) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators, except the Lieutenant Governor, and these interpretations are binding on all legislators upon publication.

(f) The Committee shall submit its formal advisory opinions to the State Ethics Commission, and the State Ethics Commission shall publish the Committee's opinions under G.S. 138A-13(d). The Committee shall edit for publication purposes as necessary to protect the identities of the individuals requesting opinions prior to submission to the State Ethics Commission. The Committee may distribute the edited formal advisory opinion to members of the General Assembly prior to publication by the State Ethics Commission.

(g) Except as provided under subsection (f) of this section, a request made by a legislator to the Committee for an advisory opinion, advisory opinions issued under this section, recommended advisory opinions received from the State Ethics Commission, and any supporting documents submitted or caused to be submitted to the Committee in connection with requests for advisory opinions or recommended advisory opinions are confidential. Neither the identity of the legislator making the request nor the existence of the request may be revealed to any person without the consent of the legislator. A legislator requesting or receiving an advisory opinion may authorize the release to any other person, the State, or any governmental unit of the request, the recommended advisory opinion, the advisory opinion, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advisory opinions, recommended advisory opinions, advisory opinions issued by the Committee, and any supporting documents are not "public records" as defined in G.S. 132-1.

(h) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of an advisory opinion. (1975, c. 564, s. 1; 2006-201, s. 13; 2007-347, s. 3; 2007-348, ss. 5, 6; 2008-213, s. 2(a).)

Editor's Note. —

Session Laws 2008-213, s. 2(d), provides: "This section is effective January 1, 2007, and applies to requests made on and after that date."

Effect of Amendments. —

Session Laws 2008-213, s. 2(a), rewrote subsection (g), which formerly read: "Except as provided under subsection (f) of this section requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission are confidential and not matters of public record." See Editor's Note for effective date and applicability.

ARTICLE 16.

Legislative Appointments to Boards and Commissions.

§ 120-123. Service by members of the General Assembly on certain boards and commissions.

No member of the General Assembly may serve on any of the following boards or commissions:

(1) The Board of Agriculture, as established by G.S. 106-2.

(1a) Not effectuated.

(1b) The Rules Review Commission as established by G.S. 143B-30.1.

(2) Repealed by Session Laws 2007-484, s. 17, effective August 30, 2007.

(3) Repealed by Session Laws 2007-323, s. 19.1(c), effective July 1, 2007.

(3a) The State Banking Commission, as established by G.S. 53-92.

(4) The Board of Public Telecommunications Commissioners, as established by G.S. 143B-426.9.

(5) The Board of Transportation, as established by G.S. 143B-350.

(6) The Board of Trustees Teachers' and State Employees' Retirement System, as established by G.S. 135-6.
(6a) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1030, s. 33.
(7) The Coastal Resources Commission, as established by G.S. 113A-104.
(8) The Environmental Management Commission, as established by G.S. 143B-283.
(8a) The Genetic Engineering Review Board, as created by G.S. 106-769.
(9) The State Fire and Rescue Commission, as established by G.S. 58-78-1.
(10) The Public Officers and Employees Liability Insurance Commission, as established by G.S. 58-32-1.
(11) Repealed by Session Laws 1983 (Regular Session, 1984), c. 995, s. 4.
(12) Repealed by Session Laws 1987, c. 71, s. 4.
(13) The North Carolina Criminal Justice Education and Training Standards Commission, as established by G.S. 17C-3.
(14) The North Carolina Housing Finance Agency Board of Directors, as established by G.S. 122A-4.
(15) The North Carolina Seafood Industrial Park Authority, as established by G.S. 113-315.25.
(16) Repealed by Session Laws 1985, c. 479, s. 153(b).
(17) The Board of Trustees of the North Carolina School of Science and Mathematics, as established by G.S. 116-233.
(18) The North Carolina Board of Science and Technology, as established by G.S. 143B-426.30.
(19) Repealed by Session Laws 1989, c. 500, s. 107(b).
(20) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(a).
(21) The Board of Trustees of the University of North Carolina Center for Public Television, as established by G.S. 116-37.1.
(22) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, as established by G.S. 143B-147.
(23) Repealed by Session Laws 1993, c. 501, s. 12.
(24) The North Carolina Alcoholism Research Authority, as established by G.S. 122C-431.
(25) Repealed by Session Laws 2002-126, s. 6.6(b), effective November 12, 2002.
(25a) The North Carolina Global TransPark Authority as established under G.S. 63A-3.
(26) The North Carolina State Ports Authority, as established by G.S. 143B-452.
(27) The Property Tax Commission, as established by G.S. 105-288.
(28) The Social Services Commission, as established by G.S. 143B-154.
(29) The North Carolina State Commission of Indian Affairs, as established by G.S. 143B-407.
(30) The Wildlife Resources Commission, as established by G.S. 143-240.
(31) The North Carolina Council for Women, as established by G.S. 143B-393.
(31a) The North Carolina Structural Pest Control Committee, as established by G.S. 106-65.23.
(32) The Board of Trustees of North Carolina Museum of Art, established by G.S. 140-5.13.
(33) The North Carolina Sheriffs' Education and Training Standards Commission, established by G.S. 17E.
(33a) Repealed by Session Laws 1987, c. 738, s. 41(d).
(34) The Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, as established by G.S. 143B-426.24.

(34a) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(b).
(34b) The North Carolina Housing Partnership, as established by G.S. 122E-4.
(35) The Board of Trustees of the State Health Plan for Teachers and State Employees, as established by G.S. 135-39.
(36) Repealed by Session Laws 2004-199, s. 27(b), effective August 17, 2004.
(37) The State Board of Chiropractic Examiners as established by G.S. 90-139.
(38) The North Carolina Manufactured Housing Board, as established by G.S. 143-143.10.
(39) Repealed by Session Laws 1987, c. 71, s. 4.
(40) The Alarm System Licensing Board, as established by G.S. 74D-4.
(41) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1011, s. 2.1(c).
(42) The Crime Victims Compensation Commission, as established by G.S. 15B-3.
(43) The North Carolina Council on Ocean Affairs, as established by G.S. 143B-390.10.
(44) The Child Care Commission, as established by G.S. 143B-168.3.
(45) Repealed by Session Laws 1995, c. 517, s. 39, effective October 1, 1995.
(45a) The North Carolina Teaching Fellows Commission, as established by G.S. 115C-363.22.
(46) The Board of Directors of the North Carolina Arboretum, as established in G.S. 116-240.
(47) The North Carolina Agricultural Finance Authority, as established by G.S. 122D-4.
(48) Reserved for future codification purposes.
(49) The Northeastern North Carolina Farmers Market Commission as established by G.S. 106-720.
(50) The Southeastern North Carolina Farmers Market Commission as established by G.S. 106-727.
(50a) The North Carolina Board of Dietetics/Nutrition as created by Article 25 of Chapter 90 of the General Statutes.
(51) The State Building Commission, as established by G.S. 143-135.25.
(52) The Commission on School Facility Needs, established by G.S. 115C-489.4.
(53) **(Effective retroactively to September 1, 1997)** The North Carolina Marine Fisheries Commission as established by G.S. 143B-289.51.
(54) Repealed by Session Laws 2001-474, s. 13, effective November 29, 2001.
(55) Repealed by Session Laws 1998-217, s. 45, effective October 31, 1998.
(56) Repealed by Session Laws 2001-474, s. 13, effective November 29, 2001.
(57) Repealed by Session Laws 2004-129, s. 35, effective July 1, 2004.
(58) The Appraisal Board created in G.S. 93E-1-5.
(59) Repealed by Session Laws 1997-286, s. 7.
(59a) The North Carolina Principal Fellows Commission established by G.S. 116-74.41.
(60) Repealed by Session Laws 1997-443, s. 8.26b.
(61) The State Health Plan Purchasing Alliance Board, as established by G.S. 143-625.
(62) The North Carolina's Northeast Commission, as established by G.S. 158-8.2.

(63) The Teacher Academy Board of Trustees, as established by Section 17.9 of House Bill 229 of the 1995 General Assembly [G.S. 116-30.01].

(63a) The North Carolina Code Officials Qualification Board, as established by G.S. 143-151.9.

(64) A facility authority established under Part 4 of Article 20 of Chapter 160A of the General Statutes.

(64a) The North Carolina Educational Facilities Finance Agency, as established by G.S. 115E-4.

(65) Repealed by Session Laws 1998-217, s. 45.

(66) The Local Government Commission, as established by G.S. 159-3.

(67) The Board of Trustees of the Natural Heritage Trust Fund, as established by G.S. 113-77.8.

(68) The State Personnel Commission.

(69) The North Carolina Partnership for Children, Inc., established pursuant to Part 10B of Article 3 of Chapter 143B of the General Statutes, and all local partnerships established pursuant to this Part.

(70) The Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.

(71) The Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.

(72) Repealed by Session Laws 2008-134, s. 73(c), effective July 28, 2008.

(73) Repealed by Session Laws 2000-149, s. 5, as amended by Session Laws 2003-425, s. 3, effective December 31, 2003.

(74) The North Carolina Respiratory Care Board as created by Article 37 of Chapter 90 of the General Statutes.

(75) The North Carolina Turnpike Authority.

(76) The Economic Investment Committee established under G.S. 143B-437.54.

(77) **(Repealed effective December 31, 2011)** The e-NC Authority created in Part 2F of Article 10 of Chapter 143B of the General Statutes.

(78) The North Carolina State Lottery Commission, as established in Chapter 18C of the General Statutes. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 328, s. 1.1; c. 558, s. 5; c. 559, s. 4; c. 717, ss. 2, 3, 43.2, 99, 105, 110; c. 761, s. 179; c. 778, s. 2; c. 786, s. 9; c. 789, s. 2; c. 832, ss. 2, 6; c. 871, s. 3; c. 899, s. 3; 1983 (Reg. Sess., 1984), c. 995, ss. 4, 19; 1985, c. 202, s. 5; c. 479, s. 153(b); c. 589, s. 37; c. 666, s. 80; c. 746, s. 6; c. 757, ss. 155(b), 167(h), 179(e), 206(f), 208(c); 1985 (Reg. Sess., 1986), c. 1011, ss. 2, 2.1(c); c. 1014, ss. 63(h), 99; c. 1028, s. 33; c. 1029, s. 14.3; 1987, c. 71, ss. 4, 5; c. 622, s. 15; c. 641, s. 21; c. 738, s. 41(d); c. 765, s. 2; c. 841, s. 4; c. 850, s. 18; 1987 (Reg. Sess., 1988), c. 993, s. 27; 1989, c. 139, s. 2; c. 168, s. 8; c. 239, s. 7; c. 500, ss. 107(b), 109(g); c. 625, s. 24; c. 727, s. 140; c. 750, s. 4; c. 752, s. 148(c); 1989 (Reg. Sess., 1990), c. 827, s. 14; c. 1024, s. 23(a)-(d); c. 1074, s. 32(a)-(c); 1991, c. 134, s. 1; c. 301, s. 1; c. 668, s. 2; c. 749, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 14(f); c. 1007, s. 37; c. 1030, ss. 33, 51.14; c. 1044, s. 10(b); 1993, c. 321, ss. 85(d), 135(b), 309.1(b); c. 405, s. 18.1; c. 419, s. 13.1; c. 501, s. 12; c. 529, s. 3.9; 1993 (Reg. Sess., 1994), c. 777, s. 4(f); 1995, c. 324, s. 17.9(i); c. 458, s. 2; c. 490, ss. 12(b), 17(b), 21(b), 30(b), 37(b); c. 517, s. 39(d); 1997-286, s. 7; 1997-443, s. 8.26; 1997-506, s. 42; 1998-181, s. 3; 1998-212, s. 12.37B(e); 1998-217, s. 45; 1998-224, s. 19(c); 1998-225, s. 1.2; 2000-147, s. 5; 2000-148, s. 2; 2000-149, ss. 2, 5; 2000-162, s. 2; 2001-474, s. 13; 2001-487, s. 21(b); 2002-126, s. 6.6(b); 2002-133, s. 5; 2002-172, s. 2.5; 2003-416, s. 2; 2003-425, ss. 2, 3; 2004-129, s. 35; 2004-199, s. 27(b); 2005-344, s. 8; 2006-66, s. 12.3(a); 2007-93, s. 1; 2007-323, ss. 19.1(c), 28.22A(o); 2007-345, s. 12; 2007-484, s. 17; 2008-134, s. 73(c).)

Editor's Note. —

Session Laws 2002-126, s. 6.6(f), provides: "The Attorney General within 45 days of this section becoming law [approved September 30, 2002] shall render an opinion as to whether or not subsections (a) through (e) of this section will subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act. Subsections (a) through (e) of this section become effective only if an opinion is issued that it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case subsections (a) through (e) of this section become effective upon the issuance of the opinion. In lieu of subsections (a) through (e) of this section, if the North Carolina State Ports Authority finds that the transfer of any stock owned by the North Carolina Ports Railway Commission to the North Carolina State Ports Authority will accomplish the same end as the transfer of assets of the North Carolina Ports Railway Commission, it may order such transfer if the Attorney General issues an opinion it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case the transfer becomes effective 60 days after it is ordered." Session Laws 2002-126, s. 6.6(b), provided for the repeal of G.S. 120-123(25).

On November 12, 2002, the Office of the Attorney General issued an opinion, as required by Session Laws 2002-126, s. 6.6(f), stating that the North Carolina State Ports Authority is not a common carrier subject to the Railway Labor Act by virtue of Session Laws 2002-126, s. 6.6(a)-(e). Session Laws 2002-126, s. 6.6(b), repealed subdivision (25).The opinion should be available on the official website of the Office of the Attorney General by the end of 2002 (http://www.jus.state.nc.us/lrframe.htm).

Effect of Amendments. —

Session Laws 2008-134, s. 73(c), effective July 28, 2008, repealed subdivision (72) which read: "The North Carolina Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes."

ARTICLE 17.

Confidentiality of Legislative Communications.

§ 120-131.1. Requests from legislative employees for assistance in the preparation of fiscal notes and evaluation reports.

(a) A request, including any accompanying documents, made to an agency employee by a legislative employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An agency employee who receives such a request or who learns of such a request made to another agency employee of his or her agency shall reveal the existence of the request only to other agency employees of the agency to the extent that it is necessary to respond to the request, and to the agency employee's supervisor and to the Office of State Budget and Management. All documents prepared by the agency employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original request, except that documents submitted to the Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents.

(a1) A request, and any accompanying documents, made to an agency employee by a legislative employee of the Program Evaluation Division for assistance in the preparation of an evaluation report is confidential. The request and any accompanying documents are not "public records" as defined by G.S. 132-1. An agency employee who receives a request under this subsection or who learns of such a request made to another agency employee of his or her agency may reveal the existence of the request to other agency employees to the extent that it is necessary to respond to the request and to the agency employee's supervisor. All documents prepared by the agency employee in response to the request of a legislative employee of the Program Evaluation Division are confidential, shall be kept confidential in the same manner as the original request, and are not "public records" as defined in G.S. 132-1.

(b) As used in this section, "agency employee" means an employee or officer of every agency of North Carolina government or its subdivisions, including every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.

(c) Violation of this section may be grounds for disciplinary action. (1995, c. 324, s. 8.1(a); c. 507, s. 8.2; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2008-196, s. 1(b).)

Editor's Note. — Session Laws 2008-196, s. 3, provides: "Section 1 of this act is effective June 14, 2007. The remainder of this act is effective when it becomes law [August 8, 2008], and violations of Section 1 of this act prior to the date this act becomes law [August 8, 2008] may not be grounds for disciplinary action."

Effect of Amendments. — Session Laws 2008-196, s. 1(b), added "and evaluation reports" in the section heading; and rewrote the section. See Editor's note for applicability and effective date.

ARTICLE 21.

The North Carolina Study Commission on Aging.

§ 120-180. Commission; creation.

Editor's Note. —

Session Laws 2008-121, s. 1, provides: "The Department of Transportation shall study issues relating to the vehicular transportation of individuals seated in wheelchairs. The study shall include reviewing appropriate methods of transporting passengers who remain seated in wheelchairs while in motor vehicles and developing guidelines for the installation and use of wheelchair tie-down systems. The Department shall report its findings and any recommendations to the North Carolina Study Commission on Aging and the Joint Legislative Transportation Oversight Committee not later than February 1, 2009."

ARTICLE 22.

The Public Health Study Commission.

§ 120-196. Commission duties.

Editor's Note. — Session Laws 2008-92, s. 1, provides: "The North Carolina Public Health Incubator Program, initially authorized in Section 10.32 of S.L. 2004-124, within the North Carolina Institute for Public Health shall report by October 1, 2008, and annually thereafter to the Public Health Study Commission on the following:

"(1) The status of its primary mission to support voluntary local health department collaborative efforts, in partnership with the Department of Health and Human Services, Division of Public Health, to address the State's regional health needs.

"(2) Its efforts to address urgent public health needs as identified in the 2008 final report of the Public Health Task Force's Public Health Improvement Plan."

Chapter 120C.

Lobbying.

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ARTICLE 1.

General Provisions.

§ 120C-100. Definitions.

(a) As used in this Article, the following terms mean:

(1) Commission. — The State Ethics Commission under Chapter 138A of the General Statutes.

(2) Designated individual. — A legislator, legislative employee, or public servant.

(3) Executive action. — The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:

a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.

b. A public servant's communication with a person, or another person on that person's behalf, with respect to any of the following:

            1. Applying for a permit, license, determination of eligibility, or certification.
            2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.
            3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.
            4. Ratemaking.
        - c. Internal administrative functions, including those functions exempted from the definition of "rule" in G.S. 150B-2(8a).
        - d. Ministerial functions.
        - e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting, or submitted as written comment, on a proposed executive action in response to a request for public comment, provided the identity of the person on whose behalf the comments are made is disclosed as part of the public participation, and no reportable expenditure is made.
- (4) In session. — One of the following:
    - a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:
        1. Adjourns sine die.
        2. Recesses or adjourns for more than 10 days.
    - b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:
        1. Adjourns sine die.
        2. Recesses or adjourns for more than 10 days.
- (5) Legislative action. — The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.
- (6) Legislative employee. — Employees and officers of the General Assembly, consultants and counsel to committees of either house of the General Assembly or of legislative commissions, who are paid by State funds, but not including legislators, members of the Council of State, nonsupervisory employees of the Administrative Division's Facility Maintenance and Food Services staff, or pages.
- (7) Legislator. — As defined in G.S. 138A-3 and G.S. 120C-104.
- (8) Liaison personnel. — Any State employee, counsel employed under G.S. 147-17, or officer whose principal duties, in practice or as set forth in that individual's job description, include lobbying legislators or legislative employees.
- (9) Lobbying. — Any of the following:
    - a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.
    - b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or

that designated individual's immediate family with the intention of influencing current or future legislative or executive action, or both.

The term "lobbying" does not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

(10) Lobbyist. — An individual who engages in lobbying and meets any of the following criteria:

a. Repealed by Session Laws 2007-348, s. 8(a), effective October 10, 2007.

b. Represents another person or governmental unit, but is not directly employed by that person or governmental unit, and receives payment for services. For the purposes of this sub-subdivision, the term "payment for services" shall not include reimbursement of actual travel and subsistence.

c. Contracts for economic consideration for the purpose of lobbying.

d. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)a. of this section or if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)b. of this section.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter.

(11) Lobbyist principal and principal. — The person or governmental unit on whose behalf the lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person or governmental unit for lobbying, the principal is the person or governmental unit whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist principal is the association or other organization, not the individual members of the association or other organization.

The term "lobbyist principal" shall not include those designating registered liaison personnel under Article 5 of this Chapter.

(11a) through (11j) Reserved for future codification purposes.

(11k) Payment for services. — Any money, thing of value, or economic benefit paid to a lobbyist for the purpose of lobbying other than reimbursement of actual travel, administrative expenses, or subsistence.

(12) Reportable expenditure. — Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:

a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00) per designated individual per single calendar day.

b. A contract, agreement, promise, or other obligation whether or not legally enforceable.

(13) Solicitation of others. — A solicitation of members of the public to communicate directly with or contact one or more designated individ-

uals for the purpose of influencing or attempting to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the following methods:

a. A broadcast, cable, or satellite transmission.
b. An e-mail communication or a Web site posting.
c. A communication delivered by print media as defined in G.S. 163-278.38Z.
d. A letter or other written communication delivered by mail or by comparable delivery service.
e. Telephone.
f. A communication at a conference, meeting, or similar event.

The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices.

(b) Except as otherwise defined in this section, the definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter. (1933, c. 11, s. 1; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2001-424, s. 6.10(b); 2005-456, s. 1.; 2006-201, s. 18; 2007-347, s. 6(b); 2007-348, ss. 7, 8(a), (b); 2008-213, ss. 4-8, 90.)

Effect of Amendments. — Session Laws 2008-213, ss. 4-8, effective August 15, 2008, in subdivision (a)(8), substituted "individual's job description" for "person's job description" and substituted "legislators or legislative employees" for "designated individuals"; in subdivisions (a)(9)a and b, substituted "designated individual's" for "person's"; in subdivision (a)(10)b, inserted "or governmental unit" twice, substituted "payment for services" for "compensation for the purpose of lobbying," substituted "'payment for services'" for "compensation"; in subdivision (a)(11), inserted "or governmental unit" three times; and added subdivision (a)(11k).

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" twice in subdivision (a11).

§ 120C-101. Rules and forms.

(a) The Commission shall adopt any rules or definitions necessary to interpret the provisions of this Chapter and adopt any rules necessary to administer the provisions of this Chapter, except for Articles 2, 4 and 8 of this Chapter. The Secretary of State shall adopt any rules, orders, and forms as are necessary to administer the provisions of Articles 2, 4 and 8 of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) With respect to the forms adopted under subsection (a) of this section, the Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government, or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so, and the business has communicated that commitment or decision to the State or local government agency involved with the project.

(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the Commission shall comply with G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the Commission shall:

(1) Publish the proposed rules in the North Carolina Register.

(2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.
(3) Notify those on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.
(4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.
(5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this subsection becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative Code.

(d) For purposes of G.S. 150B-21.3(b2), a written objection filed by the Commission to a rule adopted by the Secretary of State pursuant to this Chapter shall be deemed written objections from 10 or more persons under that statute. Notwithstanding G.S. 150B-21.3(b2), a rule adopted by the Secretary of State pursuant to this Chapter objected to by the Commission under this subsection shall not become effective until an act of the General Assembly approving the rule has become law. If the General Assembly does not approve a rule under this subsection by the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Rules Review Commission approves the rule, the permanent rule shall not become effective and any temporary rule associated with the permanent rule expires. If the General Assembly fails to approve a rule by the day of adjournment, the Secretary of State may initiate rulemaking for a new permanent rule, including by the adoption of a temporary rule. (1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 9; 2008-213, s. 9.)

Effect of Amendments. —
Session Laws 2008-213, s. 9, effective August 15, 2008, in subsection (c), substituted "comply with" for "maintain a mailing list of interested persons as provided in"; in subdivision (c)(3), substituted "notify those" for "notify persons"; and in subsection (d), added "under that statute" to the end of the first sentence.

§ 120C-102. Request for advice.

(a) At the request of any person, State agency, or governmental unit affected by this Chapter, the Commission shall render advice on specific questions involving the meaning and application of this Chapter and that person's, State agency's, or any governmental unit's compliance therewith. Requests for advice and advice rendered in response to those requests shall relate to real or reasonably anticipated fact settings or circumstances.

(a1) A request for a formal opinion under subsection (a) of this section shall be in writing, electronic or otherwise. The Commission shall issue formal advisory opinions having prospective application only. An individual, State agency, or governmental unit who relies upon the advice provided to that individual, State agency, or governmental unit on a specific matter addressed by a requested formal advisory opinion shall be immune from all of the following:
(1) Investigation by the Commission.
(2) Any adverse action by the employing entity.
(3) Investigation by the Secretary of State.

(b) Staff to the Commission may issue advice, but not formal advisory opinions, under procedures adopted by the Commission.

(c) The Commission shall publish its formal advisory opinions within 30 days of issuance, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsections (c)(c) and (d1) of this section, a request for advice, any advice provided by Commission staff, any formal advisory opinions, any supporting documents submitted or caused to be submitted to the Commission or Commission staff, and any documents prepared or collected by the Commission or the Commission staff in connection with a request for advice are confidential. The identity of the individual, State agency, or governmental unit making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual, State agency, or governmental unit who requests advice or receives advice, including a formal advisory opinion, may authorize the release to any other person, the State, or any governmental unit of the request, the advice, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1.

(d1) Staff to the Commission may share all information and documents related to requests under subsection (a) and (a1) of this section with staff of the Office of the Secretary of State. The information and documents in the possession of the staff of the Office of the Secretary of State shall remain confidential and not public records. The Commission shall forward an unedited copy of each formal advisory opinion under this section to the Secretary of State at the time the formal advisory opinion is issued to the requestor, and the Secretary of State shall treat that unedited advisory opinion as confidential and not a public record.

(e) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of a formal advisory opinion. (2006-201, s. 18; 2007-348, s. 10; 2008-213, s. 2(c).)

Editor's Note. — This section was amended by Session Laws 2008-213, s. 2(c), in the coded bill drafting format provided by G.S. 120-20.1. In subsection (d), the act inserted the reference to "(c)" as indicated by underscoring, but failed to strike through the existing reference. Subsection (d) has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 2008-213, s. 2(c), effective January 1, 2007, and applicable to requests made on and after that date, rewrote the section.

§ 120C-103. Lobbying education program.

(a) The Commission shall develop and implement a lobbying education and awareness program designed to instill in all designated individuals, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and sensitivity to situations that might result in real or potential violation of this Chapter or other related laws. The Commission shall make basic lobbying education and awareness presentations to all designated individuals upon their election, appointment, or hiring and shall offer periodic refresher presentations as the Commission deems appropriate. Every designated individual shall participate in a lobbying presentation approved by the Commission within six months of the designated individual's election, appointment, or hiring and shall attend refresher lobbying education presentations at least every two years thereafter in a manner the Commission deems appropriate. The Commission shall also make lobbying education and awareness programs available to lobbyists and lobbyists' principals. Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Commission shall publish a newsletter containing summaries of the advisory opinions, policies, procedures, and interpretive bulletins as issued from time to time, but no less than once per year. The newsletter shall be distributed to all designated individuals, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to designated individuals. The collection of laws, rules, and regulations shall be made available electronically as resource material to designated individuals, lobbyists, and lobbyists' principals upon request. (2006-201, s. 18; 2008-213, s. 11.)

Effect of Amendments. — Session Laws 2008-213, s. 11, effective August 15, 2008, substituted "designated individual's" for "person's" in the third sentence of subsection (a).

§ 120C-104. Chapter applies to candidates for certain offices.

For purposes of this Chapter, the term "legislator" as defined in G.S. 120C-100(7) and the term "public servant" as defined in G.S. 138A-3(30)a. shall include an individual having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes or nominated under G.S. 163-114 or G.S. 163-98. (2006-201, s. 18; 2008-213, s. 12.)

Effect of Amendments. — Session Laws 2008-213, s. 12, effective August 15, 2008, substituted "an individual" for "a person."

Article 2.

Registration.

§ 120C-200. Lobbyist registration procedure.

(a) A lobbyist shall file a separate registration statement for each principal the lobbyist represents with the Secretary of State before engaging in any lobbying. It shall be unlawful for an individual to lobby without registering within one business day of engaging in any lobbying as defined in G.S. 120C-100(9) unless exempted by this Chapter.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address, and telephone number; the registrant's place of business; the full name, complete address, and telephone number of each principal the lobbyist represents; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January 1 of the following year.

The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

(e) Each lobbyist shall identify himself or herself as a lobbyist prior to engaging in lobbying communications or activities with a designated individual. The lobbyist shall also disclose the identity of the lobbyist principal connected to that lobbying communication or activity. (1933, c. 11, s. 2; 1973, c. 1451; 1975, c. 820, s. 1; 1983, c. 713, s. 51; 1991, c. 740, s. 1.1; 2004-203, s. 50(a); 2006-201, s. 18; 2008-213, ss. 13, 90.)

Effect of Amendments. — Session Laws 2008-213, s. 13, effective August 15, 2008, substituted "an individual" for "a person" in subsection (a).

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" in subsection (e).

§ 120C-206. Lobbyist principal's authorization.

(a) A written authorization signed by the lobbyist principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within 10 business days after the lobbyist's registration.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist principal's full name, complete address, and telephone number, name and title of any official authorized to sign for the lobbyist principal, and the name of each lobbyist registered to represent that principal.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed. (1933, c. 11, s. 4; 1961, c. 1151; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18; 2007-347, s. 4; 2008-213, s. 90.)

Effect of Amendments. —

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" in subsections (a) and (b); and substituted "Lobbyist Principal's" for "Lobbyist's Principal's" in the section heading and subsection (b).

§ 120C-207. Lobbyist principal's fees.

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the principal's first authorization statement is filed each calendar year for a lobbyist. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyist principals that have been granted nonprofit status under 26 U.S.C. § 501(c)(3). (1933, c. 11, s. 4; 1961, c. 1151; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18; 2008-213, s. 90.)

Effect of Amendments. — Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "Lobbyist principal's" for "Lobbyist's Principal's" in the section heading and substituted "lobbyist principals" for "lobbyist's principals" in subsection (b).

§ 120C-220. Publication and availability of registrations.

(a) The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and liaison personnel in an electronic, searchable format.

(b) The Secretary of State shall make available as soon as practicable the authorizations of the lobbyists' principals in an electronic, searchable format.

(c) The Secretary of State shall make available as soon as practicable the registrations of other persons required by this Chapter to file a registration in an electronic, searchable format.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each designated individual and the State Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list of lobbyists shall be furnished periodically every 20 days while the General Assembly is in session and every 60 days thereafter. For each special session of the General Assembly, a supplemental list of lobbyists shall be furnished to the State Legislative Library.

(e) All lists required by this section may be furnished electronically. (2006-201, s. 18; 2008-213, s. 15.)

Effect of Amendments. — Session Laws 2008-213, s. 15, effective August 15, 2008, inserted "and liaison personnel" in subsection (a).

Article 3.

Prohibitions and Restrictions.

§ 120C-300. Contingency fees prohibited.

(a) No individual shall act as a lobbyist for payment for services that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to an individual doing business with the State who is engaged in sales with respect to that business with the State whose regular remuneration agreement includes commissions based on those sales. For purposes of this subsection, the term "regular remuneration" means any money, thing of value, or economic benefit conferred on or received by the individual in return for services rendered or to be rendered by that individual or another.

(c) Any payment for services to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund. (1933, c. 11, s. 3; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18; 2008-213, s. 16.)

Effect of Amendments. — Session Laws 2008-213, s. 16, effective August 15, 2008, in subsection (a), substituted "individual" for "person," substituted "payment for services" for "compensation"; in subsection (b), substituted "an individual" for "a person," substituted "remuneration" for "compensation," added the last sentence; and in subsection (c), substituted "payment for services" for "compensation paid."

§ 120C-301. Election influence prohibited.

(a) No person shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

(b) No lobbyist, lobbyist principal, or other person required to register under this Chapter shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election. (1933, c. 11, s. 3; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18; 2008-213, s. 90.)

Effect of Amendments. — Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" in subsection (b).

§ 120C-303. Gifts by lobbyists and lobbyist principals prohibited.

(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist principal may do any of the following:

(1) Knowingly give a gift to a designated individual.

(2) Knowingly give a gift with the intent that a designated individual be the ultimate recipient.

(b) Subsection (a) of this section shall not apply to gifts as described in G.S. 138A-32(e).

(c) The offering or giving of a gift in compliance with this Chapter without corrupt intent shall not constitute a violation of the statutes related to bribery under G.S. 14-217, 14-218, or 120-86, but shall be subject to civil fines under G.S. 120C-602(b).

(d) Gifts made to a nonpartisan state, regional, national, or international legislative organization of which the General Assembly is a member or a legislator or legislative employee is a member or participant of by virtue of that legislator's or legislative employee's public position, or to an affiliated organization of that nonpartisan state, regional, national, or international organization, shall not constitute a violation of subdivision (a)(2) of this section or of G.S. 138A-32(c).

(e) Gifts made to a nonpartisan state, regional, national, or international organization of which a public servant's agency is a member or a public servant is a member or participant of by virtue of that public servant's public position, or to an affiliated organization of that nonpartisan state, regional, national, or international organization, shall not constitute a violation of subdivision (a)(2) of this section or of G.S. 138A-32(c). (2006-201, s. 18; 2007-348, s. 12(a), (b); 2008-213, ss. 17-19, 90.)

Effect of Amendments. —

Session Laws 2008-213, s. 17(a), effective December 1, 2008, deleted "to a third party" following "give a gift" in subdivision (a)(2).

Session Laws 2008-213, ss. 18 and 19, effective August 15, 2008, in subsection (d), substituted "legislator's or legislative employee's" for "person's"; and in subsection (e), substituted "public servant's" for "person's."

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principals" for "lobbyist's principals" in the section heading; and substituted "lobbyist principal" for "lobbyist's principal" in subsection (a).

§ 120C-304. Restrictions.

(a) No legislator or former legislator may register as a lobbyist under this Chapter:

(1) While in office.

(2) Before the later of the close of session as set forth in G.S. 120C-100(a)(4)b.1 in which the legislator served or six months after leaving office.

(b) No public servant or former public servant as defined in G.S. 138A-3(30)a. may register as a lobbyist while in office or within six months after leaving office.

(c) No public servant or former public servant as defined in G.S. 138A-3(30)c. may register as a lobbyist under this Chapter within six months after separation from employment as a public servant.

(d) No individual registered as a lobbyist under this Chapter shall serve as a treasurer as defined in G.S. 163-278.6(19) or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or a Constitutional officer of the State.

(e) A lobbyist shall not be eligible for appointment by a State official to, or service on, any body created under the laws of this State that has regulatory authority over the activities of a person or governmental unit that the lobbyist currently represents or has represented within 120 days after the expiration of the lobbyist's registration representing that person or governmental unit. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(f) Any appointment or registration made in violation of this section shall be void. (2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 13(a); 2008-213, ss. 20, 21.)

Effect of Amendments. — Session Laws 2008-213, ss. 20 and 21, effective August 15, 2008, in subsection (c), substituted "public servant or former public servant" for "person serving as a public servant," added "as a public servant" to the end; and in subsection (e), inserted "or governmental unit" twice.

§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.

No lobbyist or another acting on the lobbyist's behalf shall permit a designated individual, or that designated individual's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the reportable expenditure. (2006-201, s. 18; 2008-213, s. 22.)

Effect of Amendments. — Session Laws 2008-213, s. 22, effective August 15, 2008, substituted "designated individual's" for "person's."

Article 4.

Reporting.

§ 120C-400. Reporting of reportable expenditures.

(a) For purposes of this Chapter, all reportable expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual in the regular course of that designated individual's employment.

(1a) Reportable expenditures benefiting or made on behalf of a designated individual's immediate family member in the regular course of that immediate family member's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist principal and a designated individual, or that

designated individual's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist principal or other employer.

(b) This section shall not apply to any reportable expenditure of cash, a cash equivalent, or a fixed asset made directly to a State agency that maintains an accounting of the reportable expenditure that is a public record. (2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 14; 2008-213, ss. 23, 90.)

Effect of Amendments. —

Session Laws 2008-213, s. 23, effective August 15, 2008, in subdivision (a)(1), deleted "or those persons' immediate family members" following "designated individual," inserted "designated" preceding "individual's employment"; added subdivision (a)(1a); in subdivision (a)(2), substituted "designated individual's" for "person's"; and in subsection (b), inserted "of cash, a cash equivalent, or a fixed asset," substituted " that maintains" for "and that agency maintains."

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" in subdivisions (a)(2) and (a)(3).

§ 120C-401. Reporting generally.

(a) Reports shall be filed whether or not reportable expenditures are made and shall be due 10 business days after the end of the reporting period.

(b) For reportable expenditures, each report shall set forth all of the following:

(1) The fair market value or face value if shown.
(2) The date of the reportable expenditure.
(3) A description of the reportable expenditure.
(4) The name and address of the payee or beneficiary.
(5) The name of any designated individual or that designated individual's immediate family member connected with the reportable expenditure.

(b1) For purposes of subdivision (b)(5) of this section, when more than 15 designated individuals benefit from or request a reportable expenditure, no names of individuals need be reported provided that the report identifies the approximate number of designated individuals benefiting or requesting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of immediate family members of designated individuals who benefited from the reportable expenditure shall be listed separately.

(b2) For purposes of subdivision (b)(5) of this section, when the reportable expenditure is a gift given with the intent that a designated individual be the ultimate recipient and the lobbyist or lobbyist principal does not know the name or names of the designated individuals, the lobbyist or lobbyist principal shall report a description of the designated individuals and those designated individuals' immediate family members connected with the reportable expenditure that clearly distinguishes its purpose or composition, and an approximate number, if known.

(c) Reportable expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment.
(3) Food and beverages.
(4) Meetings and events.
(5) Gifts.
(6) Other reportable expenditures.

(d) Each report shall be in the form prescribed by the Secretary of State, which may include electronic reports.

(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified or registered letter advising the lobbyist, lobbyist principal, or other person required to report of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.

(f) Failure to file a required report in one of the manners prescribed in this section shall void any and all registrations of the lobbyist, lobbyist principal, or solicitor. No lobbyist, lobbyist principal, or solicitor may register or reregister until full compliance with this section has occurred.

(g) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(h) The Secretary of State may adopt rules to facilitate complete and timely disclosure of required reporting, including additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a lobbyist, lobbyist principal, or solicitor for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the required notification under subsection (e) of this section.

(i) Any reportable expenditure promptly paid for at fair market value or promptly returned to a lobbyist or lobbyist principal by a designated individual or a member of the designated individual's immediate family within the reporting period shall not be reported under G.S. 120C-402 or G.S. 120C-403, and if reported, the repayment or return of the expenditure at any time shall be reported by the lobbyist and lobbyist principal on the next report due under this Article.

(j) The Secretary of State shall make available a report form that may be filed by a designated individual or a member of the designated individual's immediate family who promptly declines, returns, pays fair market value for, or donates a reportable expenditure in accordance with G.S. 138A-32(g). The Secretary of State shall index the filing of this form together with the lobbyist or lobbyist principal who gave the reportable expenditure. (1933, c. 11, s. 5; 1973, c. 108, s. 70; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 1991 (Reg. Sess., 1992), c. 1030, s. 51.9; 1999-338, s. 1; 2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 15(a); 2008-213, ss. 24, 25, 90.)

Effect of Amendments. —

Session Laws 2008-213, ss. 24 and 25, effective August 15, 2008, redesignated former subsection (b) as subsection (b), subdivisions (b)(1) through (b)(5), and subsection (b1) and rewrote the sections; and added subsection (b2).

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" in subsections (e), (f), (h), (i), and (j).

§ 120C-402. Lobbyist's reports.

(a) Each lobbyist shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist principal.

(b) The report shall include all of the following for the reporting period:

(1) All reportable expenditures made for the purpose of lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) Reportable expenditures reimbursed by the lobbyist principal, or another person or governmental unit on the lobbyist principal's behalf.

(4) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than ten dollars ($10.00).

(c) In addition to the reports required by this section, each lobbyist incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly reportable expenditure report shall also be included in each quarterly report required by subsection (a) of this section. (1933, c. 11, s. 5; 1973, c. 108, s. 70; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 1991 (Reg. Sess., 1992), c. 1030, s. 51.9; 1999-338, s. 1; 2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 41(b); 2008-213, ss. 27, 90.)

Effect of Amendments. —

Session Laws 2008-213, ss. 27 and 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" in subsections (a) and (b)(3); substituted "lobbyist principal's" for "lobbyist's principal's" and inserted "or governmental unit" in subdivision (b)(3).

§ 120C-403. Lobbyist principal's reports.

(a) Each lobbyist principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due 10 business days after the end of the reporting period, and shall include all of the following for the reporting period:

(1) All reportable expenditures made for the purpose of lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) With respect to each lobbyist registered under G.S. 120C-206, payment for services paid to all lobbyists during the quarter. If a lobbyist is a full-time employee of the principal, or is paid by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer that is reasonably allocated for the purpose of lobbying. A lobbyist principal may rely upon a statement by the lobbyist estimating the portion of the salary, fee, or retainer that is reasonably allocated for the purpose of lobbying.

(4) With respect to each lobbyist registered under G.S. 120C-206, reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(5) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than two hundred dollars ($200.00).

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section. (1933, c. 11, s. 5; 1973, c. 108, s. 70; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 1991 (Reg. Sess., 1992), c. 1030, s. 51.10; 1999-338, s. 2; 2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 41(c); 2008-213, ss. 29(a), 90.)

Effect of Amendments. — Session Laws 2008-213, s. 29(a), effective January 1, 2007, and applicable to reports filed on or after that date, in subdivision (b)(3), substituted "With respect to each lobbyist registered under G.S. 120C-206, payment for services" for "Compensation," substituted "paid" for "compensated," substituted "is reasonably allocated for the purpose of lobbying" for "compensates for lobbying," added the last sentence; and in subdivision (b)(4), inserted "With respect to each lobbyist registered under G.S. 120C-206."

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "Lobbyist principal's" for "Lobbyist's principal's" in the section catchline; substituted "lobbyist principal" for "lobbyist's principal" twice in subsection (a).

Article 5.

Liaison Personnel.

§ 120C-500. Liaison personnel.

(a) All agencies and constitutional officers of the State, including all boards, departments, divisions, constituent institutions of The University of North Carolina, community colleges, and other units of government in the executive branch shall designate liaison personnel to lobby for legislative action. This subsection shall not apply to units of local government, or a State agency or board with no staff.

(b) No State agency or constitutional officer of the State may contract with individuals who are not employed by the State to lobby legislators and legislative employees. This subsection shall not apply to counsel employed by any agency, board, department, or division authorized to employ counsel under G.S. 147-17.

(c) No more than two individuals may be designated as liaison personnel for each agency and constitutional officers of the State, including all boards, departments, divisions, constituent institutions of The University of North Carolina, community colleges, and other units of government in the executive branch.

(d) The Chief Justice of the Supreme Court shall designate at least one, but no more than four, liaison personnel to lobby for legislative action for all offices, conferences, commissions, and other agencies established under Chapter 7A of the General Statutes. This subsection shall not apply to any office created under Article 60 of Chapter 7A of the General Statutes, so long as that office complies with subsection (a) of this section. (1933, c. 11, s. 7; 1975, c. 820, s. 1; 1977, c. 697; 1991, c. 740, s. 1.1; 1993, c. 553, s. 3; 2001-424, s. 6.10(a); 2005-456, s. 1; 2006-201, s. 18; 2007-347, s. 6(a); 2008-213, ss. 30-32.)

Effect of Amendments. — Session Laws 2008-213, ss. 30 through 32, effective August 15, 2008, in subsection (b), substituted "agency or constitutional officer of the State may contract with individuals" for "funds may be used to contract with persons"; in subsection (c), substituted "individuals" for "persons"; and added subsection (d).

§ 120C-501. Applicability of Chapter on liaison personnel.

(a) Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.

(b) G.S. 120C-200 shall apply to liaison personnel. No registration fee shall be required for registration under this subsection.

(c) Liaison personal designated under this Article shall file reports under G.S. 120C-402.

(d) G.S. 120C-303 shall apply to liaison personnel with respect to legislators and legislative employees.

(e) The Board of Governors of the University of North Carolina and its constituent institutions, or the liaison personnel designated by that board or the constituent institutions, shall not give, for the purpose of lobbying, athletic tickets to any designated individual, except for those who are described in G.S. 138A-3(30)j. or those who are students and receive tickets on the same basis as other students. (2001-424, s. 6.10(a); 2005-456, s. 1; 2006-201, s. 18; 2008-213, s. 33.)

Effect of Amendments. — Session Laws 2008-213, s. 33, effective August 15, 2008, in subsection (e), inserted "Board of Governors of the," substituted "and its constituent institutions, or the" for "or any of its constituent institutions or designated," and substituted "designated by that board or the constituent institutions" for "of those persons."

ARTICLE 6.

Violations and Enforcement.

§ 120C-600. Powers and duties of the Secretary of State.

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under Articles 4 and 8 of this Chapter on a regular basis to assure complete and timely disclosure of reportable expenditures. The Secretary of State shall refer to the Commission any complaints of violations of this Chapter other than those related solely to Articles 2, 4, or 8 of this Chapter.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of Articles 2, 4, and 8 of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of Articles 2, 4, and 8 of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of Articles 2, 4, and 8 of this Chapter, all other records accumulated in conjunction with the investigation of these complaints, and any records accumulated in the performance of a systematic review shall be considered confidential records and may be released only by order of a court of competent jurisdiction. Any information obtained by the Secretary of State from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation or systematic review shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization. (2005-456, s. 1; 2006-201, s. 18; 2006-259, s. 43.5(a); 2008-213, s. 34.)

Effect of Amendments. — Session Laws 2008-213, s. 34, effective August 15, 2008, rewrote subsection (c), which read: "Complaints of violations of Articles 2, 4, and 8 of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4."

§ 120C-601. Powers and duties of the Commission.

(a) The Commission may investigate complaints of violations of this Chapter and shall refer complaints related solely to Articles 2, 4, or 8 of this Chapter to the Secretary of State.

(b) The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered confidential records and may be released only by order of a court of competent jurisdiction. Any information obtained by the Commission from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization. (2006-201, s. 18; 2006-259, s. 43.5(a); 2008-213, s. 35.)

Effect of Amendments. — Session Laws 2008-213, s. 35, effective August 15, 2008, in subsection (c), substituted "confidential records and may be released only by order of a court of competent jurisdiction" for "records of criminal investigations under G.S. 132-1" in the first sentence, and added the last sentence.

§ 120C-603. Enforcement by district attorney and Attorney General.

(a) The Commission or the Secretary of State, as appropriate, may investigate complaints of violations of this Chapter and shall report apparent violations of this Chapter to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the Commission or any member employee of the Commission shall be referred to the Attorney General for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provisions of this Chapter. (1975, c. 820, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 112; 2005-456, s. 1; 2006-201, s. 18; 2006-259, s. 43.5(b); 2008-213, s. 36.)

Effect of Amendments. — Session Laws 2008-213, s. 36, effective August 15, 2008, inserted "or governmental unit" in subsections (a) and (b).

ARTICLE 8.

Miscellaneous.

§ 120C-800. Reportable expenditures made by persons exempted or not covered by this Chapter.

(a) If a designated individual accepts a reportable expenditure made for the purpose of lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure.

(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(c) If a designated individual accepts a scholarship related to that designated individual's public service or position valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Chapter, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the designated individual accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the designated individual accepting the scholarship shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any reportable expenditure from a designated individual's extended family member to a designated individual.

(3) Reportable expenditures associated primarily with the designated individual's employment or that designated individual's immediate family member's employment.

(4) Reportable expenditures, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(6) A scholarship paid for by a nonpartisan state, regional, national, or international legislative organization of which the General Assembly is a member or a legislator or legislative employee is a member or participant of by virtue of that legislator's or legislative employee's public position, or to an affiliated organization of that nonpartisan state, regional, national, or international organization.

(f) Within 10 business days after the end of the quarter in which the reportable expenditure was made, reports required by this section shall be filed with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports. If the designated individual is required to file a statement of economic interest under G.S. 138A-24, then that designated individual may opt to report any information required by this section in the statement of economic interest.

(g) For purposes of this section, the term "scholarship" shall mean a grant-in-aid to attend a conference, meeting, or other similar event. For purposes of this section only, the term “person” shall include all persons as defined in G.S. 138A-3(27) and all governmental units as defined in G.S. 138A-3(15d). (2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 17; 2008-213, ss. 37, 38(a), 39.)

Effect of Amendments. —

Session Laws 2008-213, ss. 37 and 39, effective August 15, 2008, in subsection (c), substituted “designated individual's” for “person's”; and in subsection (g), added the second sentence.

Session Laws 2008-213, s. 38(a), effective January 1, 2007, and applicable to scholarships received on or after that date, in subsection (e), substituted “reportable expenditures” for “gifts” throughout; in subdivision (e)(2), substituted “a designated individual's extended family” for “an extended family”; in subdivision (e)(3), substituted “employment or that designated individual's” for “or that person's”; and added subdivision (e)(6).

Chapter 121.

Archives and History.

Article 1.

General Provisions.

Sec.
121-7.5. Bentonville Battlefield Fund.

Article 4.

Conservation and Historic Preservation Agreements Act.

Sec.
121-38. Validity of agreements.

Article 1.

General Provisions.

§ 121-7.4. Graveyard of the Atlantic Museum.

Editor's Note. —
Session Laws 2007-359, s. 1(b), provides: "Subject to the provisions of G.S. 121-9 and contingent upon successful lease negotiations with the National Park Service and the National Oceanic and Atmospheric Administration, this section becomes effective only if the Graveyard of the Atlantic Museum transfers and conveys to the State all its assets." As of the date of publication, the transfer and conveyance were still pending.

The Revisor of Statutes is informed that the contingencies have been met, so that the section has become effective.

§ 121-7.5. Bentonville Battlefield Fund.

(a) Fund. — The Bentonville Battlefield Fund is created as a special fund in the Department of Cultural Resources, Division of State Historic Sites. The interest earned by the Fund shall be credited to the Fund by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be used for operation, interpretation, maintenance, preservation, development, and expansion at Bentonville Battlefield State Historic Site.

(b) Disposition of Fees. — Notwithstanding Chapter 146 of the General Statutes, all receipts derived from donations or the lease, rental, or other disposition of structures or products of the land owned by or under the supervision or control of the Division of Historic Sites in Johnston County shall be credited to the Fund.

(c) The monies credited to this Fund pursuant to this section are annually appropriated to the Department of Cultural Resources. (2008-107, s. 19A.1.)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 4.

Conservation and Historic Preservation Agreements Act.

§ 121-38. Validity of agreements.

(a) No conservation or preservation agreement shall be unenforceable because of

(1) Lack of privity of estate or contract, or
(2) Lack of benefit to particular land or person, or

(3) The assignability of the benefit to another holder as defined in this Article.

(b) These agreements are interests in land and may be acquired by any holder in the same manner as it may acquire other interests in land.

(c) These agreements may be effective perpetually or for shorter stipulated periods of time.

(d) These agreements may impose present, future, or continuing obligations on either party to the agreement, or their successors, in furtherance of the purposes of the agreement.

(e) These agreements may contain provisions which require the payment of a fee upon a future conveyance of the property that is subject to the agreement. (1979, c. 747, s. 5; 2008-165, s. 1.)

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Effect of Amendments. — Session Laws 2008-165, s. 1, effective August 3, 2008, substituted "These" for "Such" throughout the section; and added subsection (e).

Chapter 122A.

North Carolina Housing Finance Agency.

Sec.
122A-3. Definitions.
122A-5. General powers.
122A-5.4. Housing for persons and families of moderate income.
122A-5.14. Home Protection Program and Fund.
122A-8.1. [Repealed.]

§ 122A-1. Short title.

Housing Finance Agency to Continue and Expand North Carolina Home Protection Pilot Program and Loan Fund. — Session Laws 2007-323, s. 22.1(a)-(f), provides: "(a) The North Carolina Housing Finance Agency shall continue, develop, implement, and administer a pilot program to assist North Carolina workers who have lost jobs as a result of changing economic conditions in North Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

"(1) Develop and administer the North Carolina Home Protection Pilot Program and Loan Fund to ensure that workers in the counties selected for the Pilot have assistance to avoid losing their homes to foreclosure. The Program shall include all counties that had greater than seven percent (7%) average unemployment in the 2004-2005 fiscal year.

"(2) Make loans secured by liens on residential real property located in North Carolina to property owners who are eligible for those loans.

"(3) Develop and administer procedures by which property owners at risk of being foreclosed upon may qualify for assistance.

"(4) Designate, approve, and fund nonprofit counseling agencies in counties participating in the Program to be available to assist the Agency in implementing the provisions of this section, provide services such as direct mortgagee negotiations on behalf of unemployed workers, and process loan applications for the Agency.

"(5) Develop and fund enhanced methods by which workers may be notified of foreclosure mitigation services, may easily contact local nonprofit counseling agencies, and may apply for loans from the Agency.

"(6) No later than April 1, 2008, report to the Chairs of the Appropriations Committees of the Senate and the House of Representatives on the effectiveness of the Program in accomplishing its purposes and provide any other information the Agency determines is pertinent or that the General Assembly requests.

"(b) As used in this section, the following definitions apply:

"(1) Agency. — The North Carolina Housing Finance Agency.

"(2) Counseling agency. — A nonprofit counseling agency located in North Carolina that is approved by the North Carolina Housing Finance Agency.

"(3) Mortgage. — An obligation evidenced by a security document and secured by a lien upon real property located within North Carolina, including a deed of trust and land sale agreement. Mortgage also means an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located.

"(4) Mortgagee. — The owner of a beneficial interest in a mortgage loan, the servicer for the owner of a beneficial interest in a mortgage loan, or the trustee for a securitized trust that holds title to a beneficial interest in a mortgage loan.

"(c) Notwithstanding Chapters 23, 24, and 45 of the General Statutes or any other provision of law, upon the proper filing of an application for loan assistance by a mortgagor under this section, a mortgagee shall not do the following:

"(1) Accelerate the maturity of any mortgage obligation covered under this section.

"(2) Commence or continue any legal action, including mortgage foreclosure pursuant to Chapter 45 of the General Statutes, to recover the mortgage obligation.

"(3) Take possession of any security of the mortgagor for the mortgage obligation.

"(4) Procure or receive a deed in lieu of foreclosure.

"(5) Enter judgment by confession pursuant to a note accompanying a mortgage.

"(6) Proceed to enforce the mortgage obligation pursuant to applicable rules of civil procedure for a period of 120 days following the date of the mortgagor's properly filed application.

"The provisions of this section shall not apply if the mortgagee receives notice from the Agency that the mortgagor's application has been denied.

"If a mortgagee acts as proscribed in subdivisions (1) through (6) of this subsection, a mortgagor shall be entitled to injunctive relief without the necessity of providing a bond. This relief shall be in addition to any defenses available under G.S. 45-21.16(d) and any other remedies at law or equity.

"Upon the Agency's receipt of a properly filed mortgagor's application for loan assistance, the Agency shall mail notice of the application to the mortgagor's mortgagee within five business days of the Agency's receipt of the application. The Agency shall also mail notice of the acceptance or denial of the mortgagor's application to the mortgagee within five days of the Agency's determination. Notice shall be deemed sufficient if sent to the last known address of the mortgagee.

"(d) Rule Making. — Solely with respect to the adoption of procedures for the pilot program by which property owners at risk of being foreclosed upon may qualify for assistance, the Agency is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of procedures, the Agency shall:

"(1) Publish the proposed procedures in the North Carolina Register at least 30 days prior to the adoption of the final procedures.

"(2) Accept oral and written comments on the proposed procedures.

"(3) Hold at least one public hearing on the proposed procedures.

"(e) Funds appropriated under this act to the Agency that are unexpended and unencumbered shall not revert but shall remain available to be used for the expansion of the program to additional counties as provided by this section.

"(f) This section applies only to the 2007-2008 fiscal year."

Session Laws 2008-34, s. 7, effective June 30, 2008 and expiring July 15, 2008 amended 2007-323, s. 22.1(f) by rewriting it to read: "This section applies to the 2007-2008 fiscal year and to the 2008-2009 fiscal year." Because the amendment expired on July 15, 2008, the text of Session Laws 2007-323, s. 22.1(f) has been set out in this note as it appeared prior to the 2008 amendment.

§ 122A-3. Definitions.

The following definitions apply in this section:

(1) Agency. — The North Carolina Housing Finance Agency created by this Chapter.

(2) Bonds or notes. — The bonds or the bond anticipation notes or construction loan notes authorized to be issued by the Agency under this Chapter.

(3) Counseling agency. — A nonprofit counseling agency located in North Carolina that is approved by the North Carolina Housing Finance Agency.

(4) Energy conservation loan. — A loan obtained from a mortgage lender for the purpose of satisfying an existing obligation of a borrower who is the resident owner of a single-family dwelling or of "residential housing." The existing obligation of the owner in an "energy conservation loan" must have been incurred to pay for the purchase of materials or the installation of materials, or both, which results in a significant decrease in the amount of consumption of nonrenewable sources of energy in order to provide or maintain a comfortable level of room temperatures in his residence during the winter. "Energy conservation loan" does not include a loan obtained to refinance an existing loan agreement unless payment or collection of the original loan was guaranteed by the Agency.

(5) Federally insured securities. — An evidence of indebtedness secured by a first mortgage lien on residential housing for persons of lower income and insured or guaranteed as to repayment of principal and interest by the United States or any agency or instrumentality thereof.

(6) Governmental agency. — Any department, division, public agency, political subdivision, or other public instrumentality of the State, the federal government, any other State or public agency, or any two or more thereof.

(7) Mortgage or mortgage loan. — A mortgage loan for residential housing, including, without limitation, a mortgage loan to finance, either temporarily or permanently, the construction, rehabilitation,

improvement, or acquisition and rehabilitation or improvement of residential housing and a mortgage loan insured or guaranteed by the United States or an instrumentality thereof or for which there is a commitment by the United States or an instrumentality thereof to insure such a mortgage. A mortgage obligation may be evidenced by a security document and secured by a lien upon real property, including a deed of trust and land sale agreement. Mortgage also means an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located.

(8) Mortgage lenders. — Any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association, life insurance company, mortgage banking company, the federal government, and any other financial institution authorized to transact business in the State.

(9) Mortgagee. — The owner of a beneficial interest in a mortgage loan, the servicer for the owner of a beneficial interest in a mortgage loan, or the trustee for a securitized trust that holds title to a beneficial interest in a mortgage loan.

(10) Obligations. — Any bonds or bond anticipation notes authorized to be issued by the Agency under the provisions of this Chapter.

(11) Persons and families of lower income. — Persons and families deemed by the Agency to require such assistance as is made available by this Chapter on account of insufficient personal or family income, taking into consideration, without limitation, (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities available, (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a lower-income basis, and (v) the ability of such persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing decent, safe, and sanitary housing and deemed by the Agency therefore to be eligible to occupy residential housing financed wholly or in part, with mortgages, or with other public or private assistance.

(12) Rehabilitation. — The renovation or improvement of residential housing by the owner of said residential housing.

(13) Residential housing. — A specific work or improvement undertaken primarily to provide dwelling accommodations for persons and families of lower income, including the rehabilitation of buildings and improvements, and such other nonhousing facilities as may be incidental or appurtenant thereto.

(14) State. — The State of North Carolina. (1969, c. 1235, s. 3; 1973, c. 1296, ss. 3-6, 8-14, 16, 17; 1975, c. 19, s. 42; 1977, c. 1083, s. 2; 1979, 2nd Sess., c. 1238, s. 1; 1981, c. 344, s. 1; 1983, c. 148, s. 1; 2008-107, s. 21.1(a).)

Editor's Note. — The definitions in this section were redesignated at the direction of the Revisor of Statutes to preserve alphabetical order.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 21.1(a), effective July 1, 2008, rewrote the section.

§ 122A-5. General powers.

The Agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

(1) To participate in any federally assisted lease program for housing for persons of lower income under any federal legislation, including, without limitation, section 8 of the National Housing Act; provided, however, that such participation may take place only upon the request and approval of the governing body of the county, city or town in which any such project is to be located;

(2) To make or participate in the making of mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the Agency that mortgage loans are not otherwise available wholly or in part from private lenders upon reasonably equivalent terms and conditions;

(3) To purchase or participate in the purchase and enter into commitments by itself or together with others for

a. The purchase of mortgage loans made by mortgage lenders to sponsors of residential housing or to persons of lower income for residential housing where the Agency has given its approval prior to the initial making of the mortgage loan; provided, however, that any such purchase shall be made only upon the determination by the Agency that mortgage loans were, at the time the approval was given, not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions, or

b. The purchase of mortgage loans made by mortgage lenders without such prior approval to sponsors of housing for persons and families of any income or to persons of any income for housing upon such terms and conditions requiring the proceeds thereof to be used by such mortgage lenders for the making of new mortgage loans to sponsors of residential housing or to persons of lower income for residential housing as the Agency may prescribe by its rules and regulations; provided, however, that (i) any such purchase of existing mortgage loans shall be made only upon the determination by the Agency that such new mortgage loans are not otherwise available from private lenders upon reasonably equivalent terms and conditions, and (ii) the Agency shall purchase mortgage loans made to sponsors of housing for persons and families not of lower income or to persons not of lower income for housing only upon the determination by the Agency that mortgage loans made to sponsors of residential housing or to persons of lower income for residential housing are not available for purchase by the Agency upon reasonable terms and conditions;

(4) Repealed by Session Laws 1973, c. 1296, s. 24;

(4a) To make loans to mortgage lenders on terms and conditions requiring the proceeds thereof to be used by such mortgage lenders to originate new mortgage loans to (i) sponsors of residential housing for persons and families of lower income and persons and families of moderate income and (ii) persons and families of lower income and persons and families of moderate income for residential housing. The loans to mortgage lenders and the loans to be made by such mortgage lenders shall be made on such applicable terms and conditions as are set forth in rules and regulations of the Agency; Provided, however, that loans shall be made by such mortgage lenders only upon the determination by the Agency that such financing is not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments and other evidences of indebtedness;

(6) To acquire on a temporary basis real property, or an interest therein, in its own name, by purchase, transfer or foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the Agency has an interest and to sell, transfer and convey any such property to a buyer and, in the event such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to rent or lease such property to a tenant pending such sale, transfer or conveyance;

(7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a loan of any type permitted by this Chapter;

(8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;

(9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of any mortgage loan, mortgage loan commitment, contract or agreement of any kind to which the Agency is a party;

(10) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue its obligation as evidence of any such borrowing;

(11) To include in any borrowing such amounts as may be deemed necessary by the Agency to pay financing charges, interest on the obligations for a period not exceeding two years from their date, consultant, advisory and legal fees and such other expenses as are necessary or incident to such borrowing;

(12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;

(13) To provide technical and advisory services to sponsors, builders and developers of residential housing and to residents thereof;

(14) To promote research and development in scientific methods of constructing low-cost residential housing of high durability;

(15) To service or contract for the servicing of mortgage loans and to make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the Agency under this Chapter, including contracts with any person, firm, corporation, governmental agency or other entity, and each and any North Carolina governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the Agency to facilitate the purposes of this Chapter;

(16) To receive, administer and comply with the conditions and requirements respecting any appropriation or any gift, grant or donation of any property or money, including the proceeds of general obligation bonds of the State;

(17) To sue and be sued in its own name, plead and be impleaded;

(18) To establish and maintain an office for the transaction of its business in the City of Raleigh and at such place or places as the board of

directors deems advisable or necessary in carrying out the purposes of this Chapter; provided, however, that the Agency shall comply with the provisions of Articles 6 and 7 of Chapter 146 of the General Statutes governing the acquisition of office space;

(19) To adopt an official seal and alter the same at pleasure;

(20) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(21) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the Agency and to fix and pay their compensation from funds available to the Agency therefor;

(22) To purchase or to participate in the purchase and enter into commitments by itself or together with others for the purchase of federally insured securities; provided, however, that the Agency shall first determine that the proceeds of such securities will be utilized for the purpose of making new mortgage loans to sponsors of residential housing or to persons of lower income for residential housing, all as specified in regulations to be adopted by the Agency;

(23) To provide, or contract for the providing of, management and counseling services whenever, in the judgment of the Agency, no other satisfactory low-income housing counseling service is available for occupants of rental projects for persons of lower income or for prospective homeowners of lower income; provided, however, that no such program shall be undertaken until the Agency shall have made a study of its feasibility and shall have determined that the undertaking of such program will not adversely affect other programs of the Agency;

(24) To advise the Governor regarding the coordination of public and private low- and moderate-income housing programs; and

(25) To participate in and administer federal housing programs, including housing rehabilitation, construction of new housing, assistance to the homeless, and home ownership assistance;

(26) To acquire, hold, rent, encumber, transfer, convey, and otherwise deal with real property and utilities in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The Board of Directors may pledge or encumber income and assets of the Agency to secure financing for real property; and

(27) To select and retain, subject to the approval of the Local Government Commission, the financial consultants, underwriters, and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants, or bond attorneys out of the proceeds of any such issue with regard to which the services were performed. (1969, c. 1235, s. 5; 1973, c. 1296, ss. 21-24, 27, 29, 35, 36, 40-43; 1975, c. 616, ss. 1, 2; 1981, c. 895, s. 3; 1983, c. 148, s. 2; 1993, c. 321, s. 305(b); 2008-194, s. 1(a).)

Effect of Amendments. — Session Laws 2008-194, s. 1(a), effective August 8, 2008, added subdivisions (26) and (27), and made related changes.

§ 122A-5.4. Housing for persons and families of moderate income.

(a) The General Assembly hereby finds and determines that there is a serious shortage of decent, safe and sanitary housing which persons and families of moderate income in the State can afford; that it is in the best interests of the State to encourage home ownership by persons and families of moderate income; that the assistance provided by this section will enable persons and families of moderate income to acquire existing decent, safe and sanitary housing without undue financial hardship and will encourage private enterprise to sponsor, build and rehabilitate additional housing for such persons and families; and that the Agency in providing such assistance is promoting the health, welfare and prosperity of all citizens of the State and is serving a public purpose for the benefit of the general public.

(b) The terms "persons and families of lower income" and "persons of lower income" wherever they appear in this Chapter, except where they appear in G.S. 122A-2 and G.S. 122A-3, shall be deemed to include "persons and families of moderate income" as defined in clause (c) of this section.

(c) "Persons and families of moderate income" means persons and families deemed by the Agency to require the assistance made available by this Chapter on account of insufficient personal or family income taking into consideration, without limitation, (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities available and (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a moderate or low and moderate income basis. (1979, c. 810; 2008-107, s. 21.1(b).)

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 21.1(b), effective July 1, 2008, substituted "G.S. 122A-3" for "G.S. 122A-3(11)" in subsection (b).

§ 122A-5.14. Home Protection Program and Fund.

(a) The North Carolina Housing Finance Agency shall establish and administer the Home Protection Program ("Program") to assist North Carolina workers who have lost jobs as a result of changing economic conditions in North Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

(1) Develop and administer the Home Protection Program Fund ("Fund") to ensure that workers in North Carolina have assistance to avoid losing their homes to foreclosure.

(2) Make loans secured by liens on residential real property located in North Carolina to property owners who are eligible for those loans.

(3) Develop and administer procedures by which property owners at risk of being foreclosed upon may qualify for assistance.

(4) Designate, approve, and fund nonprofit counseling agencies in North Carolina to be available to assist the Agency in implementing the provisions of this section, provide services such as direct mortgagee negotiations on behalf of unemployed workers, and process loan applications for the Agency.

(5) Develop and fund enhanced methods by which workers may be notified of foreclosure mitigation services, may easily contact local nonprofit counseling agencies, and may apply for loans from the Agency.

(b) Home Protection Period. — Notwithstanding Chapters 23, 24, and 45 of the General Statutes or any other provision of law, upon the proper filing of an application for loan assistance by a mortgagor under this section, a mortgagee shall not do the following for a period of 120 days following the date of the mortgagor's properly filed application:

(1) Accelerate the maturity of any mortgage obligation covered under this section.
(2) Commence or continue any legal action, including mortgage foreclosure pursuant to Chapter 45 of the General Statutes, to recover the mortgage obligation.
(3) Take possession of any security of the mortgagor for the mortgage obligation.
(4) Procure or receive a deed in lieu of foreclosure.
(5) Enter judgment by confession pursuant to a note accompanying a mortgage.
(6) Proceed to enforce the mortgage obligation pursuant to applicable rules of civil procedure.

The provisions of this section shall not apply if the mortgagee receives notice from the Agency that the mortgagor's application has been denied.

If a mortgagee acts as proscribed in subdivisions (1) through (6) of this subsection, a mortgagor shall be entitled to injunctive relief without the necessity of providing a bond. This relief shall be in addition to any defenses available under G.S. 45-21.16(d) and any other remedies at law or equity.

Upon the Agency's receipt of a properly filed mortgagor's application for loan assistance, the Agency shall mail notice of the application to the mortgagor's mortgagee within 10 business days of the Agency's receipt of the application. The Agency shall also mail notice of the acceptance or denial of the mortgagor's application to the mortgagee within five days of the Agency's determination. Notice shall be deemed sufficient if sent to the last known address of the mortgagee.

(c) Rule Making. — Solely with respect to the adoption of procedures for the program by which property owners at risk of being foreclosed upon may qualify for assistance, the Agency is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of procedures, the Agency shall:

(1) Publish the proposed procedures in the North Carolina Register at least 30 days prior to the adoption of the final procedures.
(2) Accept oral and written comments on the proposed procedures.
(3) Hold at least one public hearing on the proposed procedures.

(d) Annual Report. — By April 1 of each year, the Agency shall report to the House Appropriations Subcommittee on General Government and Senate Appropriations Subcommittee on General Government and Information Technology on the effectiveness of the Program in accomplishing its purposes and provide any other information the Agency determines is pertinent or that the General Assembly requests. (2008-107, s. 21.1(c).)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 122A-8.1: Repealed by Session Laws 2008-194, s. 1(b), effective August 8, 2008.

Chapter 122C.

Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.

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ARTICLE 1.

General Provisions.

§ 122C-1. Short title.

CASE NOTES

Request for Instruction. — Denial of defendant's request for a modified jury instruction regarding post-verdict commitment procedures after a verdict of not guilty by reason of insanity was not erroneous because the trial court properly instructed the jury on the "central meaning of the statute," and its instruction substantially complied with defendant's request. State v. Hall, — N.C. App. —, 653 S.E.2d 200, 2007 N.C. App. LEXIS 2453 (2007).

§ 122C-3. Definitions.

The following definitions apply in this Chapter:

(1) "Area authority" means the area mental health, developmental disabilities, and substance abuse authority.

(2) "Area board" means the area mental health, developmental disabilities, and substance abuse board.

(2a) "Area director" means the administrative head of the area authority program appointed pursuant to G.S. 122C-121.

(2b) "Board of county commissioners" includes the participating boards of county commissioners for multicounty area authorities and multicounty programs.

(3) "Camp Butner reservation" means the original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State, and shall also include those areas within the municipal boundaries of the Town of Butner and that portion of the extraterritorial jurisdiction of the Town of Butner consisting of lands not owned by the State of North Carolina.

(4) "City" has the same meaning as in G.S. 153A-1(1).

(5) "Catchment area" means the geographic part of the State served by a specific area authority or county program.

(6) "Client" means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.

(7) "Client advocate" means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.

(8) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(9) "Confidential information" means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. "Confidential information" does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.

(9a) "Core services" are services that are necessary for the basic foundation of any service delivery system. Core services are of two types: front-end service capacity such as screening, assessment, and emergency triage, and indirect services such as prevention, education, and consultation at a community level.

(10) "County of residence" of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.

(10a) "County program" means a mental health, developmental disabilities, and substance abuse services program established, operated, and governed by a county pursuant to G.S. 122C-115.1.

(11) "Dangerous to himself or others" means:

a. "Dangerous to himself" means that within the relevant past:

1. The individual has acted in such a way as to show:

I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or

2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

b. "Dangerous to others" means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

(11a) "Day/night service" means a service provided on a regular basis, in a structured environment that is offered to the same individual for a period of three or more hours within a 24-hour period.

(12) "Department" means the North Carolina Department of Health and Human Services.

(12a) "Developmental disability" means a severe, chronic disability of a person which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;
c. Is likely to continue indefinitely;
d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and
e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or
f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.

(13) "Division" means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department.

(13a) Repealed by Session Laws 2000-67, s. 11.21(c), effective July 1, 2000.

(13a1) Recodified as subdivision (13c).

(13b) Recodified as subdivision (13d).

(13c) "Eligible infants and toddlers" means children with or at risk for developmental delays or atypical development until:
  a. They have reached their third birthday;
  b. Their parents have requested to have them receive services in the preschool program for children with disabilities established under Article 9 of Chapter 115C of the General Statutes; and
  c. They have been placed in the program by the local educational agency.

In no event shall a child be considered an eligible toddler after the beginning of the school year immediately following the child's third birthday, unless the Secretary and the State Board enter into an agreement under G.S. 115C-106.4(c) [G.S. 115C-107.1(c)].

The early intervention services that may be provided for these children and their families include early identification and screening, multidisciplinary evaluations, case management services, family training, counseling and home visits, psychological services, speech pathology and audiology, and occupational and physical therapy. All evaluations performed as part of early intervention services shall be appropriate to the individual child's age and development.

(13d) "Eligible psychologist" means a licensed psychologist who has at least two years' clinical experience. After January 1, 1995, "eligible psychologist" means a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.

(14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:
  a. An "area facility", which is a facility that is operated by or under contract with the area authority or county program. For the purposes of this subparagraph, a contract is a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area authority or county program. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
  b. A "licensable facility", which is a facility that provides services to individuals who are mentally ill, developmentally disabled, or substance abusers for one or more minors or for two or more adults. These services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;
  c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;
  d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;
  e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;
  f. A "State facility", which is a facility that is operated by the Secretary;
  g. A "24-hour facility", which is a facility that provides a structured living environment and services for a period of 24 consecutive

hours or more and includes hospitals that are facilities under this Chapter; and

h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.

(15) "Guardian" means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A or 35A or former Chapters 33 or 35 of the General Statutes.

(16) "Habilitation" means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.

(17) "Incompetent adult" means an adult individual adjudicated incompetent.

(18) "Intoxicated" means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.

(19) "Law-enforcement officer" means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.

(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable as defined in G.S. 122C-72(c) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of attorney.

(20a) "Local funds" means fees from services, including client payments, Medicare and the local and federal share of Medicaid receipts, fees from agencies under contract, gifts and donations, and county and municipal funds, and any other funds not administered by the Division.

(20b) "Local management entity" or "LME" means an area authority, county program, or consolidated human services agency. It is a collective term that refers to functional responsibilities rather than governance structure.

(21) "Mental illness" means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment.

(22) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

(23) "Mentally retarded with accompanying behavior disorder" means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.

(23a) "Minimally adequate services" means a level of service required for compliance with all applicable State and federal laws, rules, regulations, and policies and with generally accepted professional standards and principles.

(24) "Next of kin" means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, "next of kin" means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.

(25) "Operating costs" means expenditures made by an area authority in the delivery of services for mental health, developmental disabilities, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.

(26) Repealed by Session Laws 1987, c. 345, s. 1.

(26a) "Other recipient" means an individual who is not admitted to a facility but who receives a service other than care, treatment, or rehabilitation services. The services that the "other recipient" may receive include consultative, preventative, educational, and assessment services.

(27) "Outpatient treatment" as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.

(28) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.

(29) "Physician" means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.

(29a) "Program director" means the director of a county program established pursuant to G.S. 122C-115.1.

(30) "Provider of support services" means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.

(30a) "Psychologist" means an individual licensed to practice psychology under Chapter 90. The term "eligible psychologist" is defined in subdivision (13a).

(30b) "Public services" means publicly funded mental health, developmental disabilities, and substance abuse services, whether provided by public or private providers.

(31) "Qualified professional" means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, certified fee-based practicing pastoral counselors, and certified counselors.

(32) "Responsible professional" means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.

(33) "Secretary" means the Secretary of the Department of Health and Human Services.

(33a) "Severe and persistent mental illness" means a mental disorder suffered by persons of 18 years of age or older that leads these persons to exhibit emotional or behavioral functioning that is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long term or indefinite duration. This disorder is a severe and persistent mental disability, resulting in a long-term limitation of functional capacities for the primary activities of daily living, such as interpersonal relations, homemaking, self-care, employment, and recreation.

(34) Repealed by Session Laws 2001-437, s. 1.2(c), effective July 1, 2002.

(35) Repealed by Session Laws 2001-437, s. 1.2(c), effective July 1, 2002.

(35a) Renumbered as subdivision (35e).

(35b) "Specialty services" means services that are provided to consumers from low-incidence populations.

(35c) "State" or "Local" Consumer Advocate means the individual carrying out the duties of the State or Local Consumer Advocacy Program Office in accordance with Article 1A of this Chapter.

(35d) "State Plan" means the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(35e) "State resources" means State and federal funds and other receipts administered by the Division.

(36) "Substance abuse" means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. "Substance abuse" may include a pattern of tolerance and withdrawal.

(37) "Substance abuser" means an individual who engages in substance abuse.

(38) "Targeted population" means those individuals who are given service priority under the State Plan.

(39) "Uniform portal process" means a standardized process and procedures used to ensure consumer access to, and exit from, public services in accordance with the State Plan. (1899, c. 1, s. 28; Rev., s. 4574; C.S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12; 1949, c. 71, s. 3; 1955, c. 887, s. 1; 1957, c. 1232, s. 13; 1959, c. 1028, s. 4; 1963, c. 1166, ss. 2, 10; c. 1184, s. 1; 1965, c. 933; 1973, c. 475, s. 2; c. 476, s. 133; c. 726, s. 1; c. 1408, ss. 1, 3; 1977, c. 400, ss. 2, 12; c. 568, s. 1; c. 679, s. 7; 1977, 2nd Sess., c. 1134, s. 2; 1979, c. 164, ss. 3, 4; c. 171, s. 2; c. 358, ss. 2, 26; c. 915, s. 1; c. 751, s. 28; 1981, c. 51, ss. 2-4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; c. 638, s. 2; c. 718, s. 1; c. 864, s. 4; 1983 (Reg. Sess., 1984), c. 1110, s. 4; 1985, c. 589, s. 2; c. 695, s. 1; c. 777, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 7; 1987, c. 345, s. 1; c. 830, ss. 47(a), (b); 1989, c. 141, s. 8; c. 223; c. 486, s. 2; c. 625, s. 2; 1989 (Reg. Sess., 1990), c. 823, s. 11; c. 1003, s. 2; c. 1024, s. 26(a); 1993, c. 321, s. 220(a)-(c); c. 375, s. 6; c. 396, ss. 1, 2; 1995, c. 249, s. 1; c. 406, s. 5; 1997-443, s. 11A.118(a); 1997-456, s. 27; 1998-198, s. 3; 1998-202, s. 4(r); 1999-186, s. 1; 2000-67, s. 11.21(c); 2001-437, ss. 1.2(b), 1.2(c); 2001-437, s. 1.2(a); 2003-313, s. 1; 2006-69, s. 3(n); 2006-142, ss. 4(a), 7; 2007-269, s. 3.1; 2007-502, s. 15(a); 2008-107, s. 10.15(dd).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 10.15(dd), effective July 1, 2008, added subdivision (23a).

ARTICLE 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

§ 122C-26. Powers of the Commission.

Editor's Note. —

Session Laws 2008-131, s. 3, provides: "The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall study the current death reporting requirements under G.S. 122C-26(5)c. and assess the need for any additional reporting requirements or modifications to existing rules or procedures. The Commission shall report its findings to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services not later than November 1, 2008."

§ 122C-31. Report required upon death of client.

(a) A facility shall notify the Secretary immediately upon the death of any client of the facility that occurs within seven days of physical restraint or seclusion of the client, and shall notify the Secretary within three days of the death of any client of the facility resulting from violence, accident, suicide, or homicide. The Secretary may assess a civil penalty of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000) against a facility that fails to notify the Secretary of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Secretary or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

(b) Upon receipt of notification from a facility in accordance with subsection (a) of this section, the Secretary shall notify the State protection and advocacy agency designated under the Developmental Disabilities Assistance and Bill of Rights Act 2000, P.L. 106-402, that a person with a disability has died. The Secretary shall provide the agency access to the information about each death reported pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The agency shall use the information in accordance with its powers and duties under applicable State and federal law and regulations.

(c) If the death of a client of a facility occurs within seven days of the use of physical restraint or seclusion, then the Secretary shall initiate immediately an investigation of the death.

(d) An inpatient psychiatric unit of a hospital licensed under Chapter 131E of the General Statutes shall comply with this section.

(e) Nothing in this section abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Secretary or the agency. In carrying out the requirements of this section, the Secretary and the agency shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this section. A facility or provider that makes available confidential information in accordance with this section and with State and federal law is not liable for the release of the information.

(f) The Secretary shall establish a standard reporting format for reporting deaths pursuant to this section and shall provide to facilities subject to this section a form for the facility's use in complying with this section.

(g) In addition to the reporting requirements specified in subsections (a) through (e) of this section, and pursuant to G.S. 130A-383, every State facility shall report the death of any client of the facility, regardless of the manner of death, to the medical examiner of the county in which the body of the deceased is found. (2000-129, s. 3(a); 2007-323, ss. 19.1(e), (f); 2008-131, s. 1.)

Editor's Note. —

Session Laws 2008-131, s. 3, provides: "The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall study the current death reporting requirements under G.S. 122C-26(5)c. and assess the need for any additional reporting requirements or modifications to existing rules or procedures. The Commission shall report its findings to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services not later than November 1, 2008."

Effect of Amendments. —

Session Laws 2008-131, s. 1, effective July 28, 2008, added subsection (g).

ARTICLE 3.

Clients' Rights and Advance Instruction.

Part 1. Client's Rights.

§ 122C-52. Right to confidentiality.

CASE NOTES

Mental Health Records Admissible. —

Disclosure of the decedent's substance abuse treatment information, pursuant to a trial judge's order in a medical malpractice action where the decedent's mental health and history of substance abuse were placed at issue by the decedent and later the decedent's executor, was authorized by the exception codified in G.S. 122C-54 because the disclosure of the information was not prohibited by 42 C.F.R. §§ 2.63(a)(3) and 2.64(d). Spangler v. Olchowski, — N.C. App. —, 654 S.E.2d 507, 2007 N.C. App. LEXIS 2575 (2007).

§ 122C-53. Exceptions; client.

CASE NOTES

Cited in Spangler v. Olchowski, — N.C. App. —, 654 S.E.2d 507, 2007 N.C. App. LEXIS 2575 (2007).

§ 122C-54. Exceptions; abuse reports and court proceedings.

(a) A facility shall disclose confidential information if a court of competent jurisdiction issues an order compelling disclosure.

(a1) Upon a determination by the facility director or his designee that disclosure is in the best interests of the client, a facility may disclose confidential information for purposes of filing a petition for involuntary commitment of a client pursuant to Article 5 of this Chapter or for purposes of filing a petition for the adjudication of incompetency of the client and the appointment of a guardian or an interim guardian under Chapter 35A of the General Statutes.

(b) If an individual is a defendant in a criminal case and a mental examination of the defendant has been ordered by the court as provided in G.S. 15A-1002, the facility shall send the results or the report of the mental examination to the clerk of court, to the district attorney or prosecuting officer, and to the attorney of record for the defendant as provided in G.S. 15A-1002(d).

(c) Certified copies of written results of examinations by physicians and records in the cases of clients voluntarily admitted or involuntarily committed and facing district court hearings and rehearings pursuant to Article 5 of this Chapter shall be furnished by the facility to the client's counsel, the attorney representing the State's interest, and the court. The confidentiality of client information shall be preserved in all matters except those pertaining to the necessity for admission or continued stay in the facility or commitment under review. The relevance of confidential information for which disclosure is sought in a particular case shall be determined by the court with jurisdiction over the matter.

(d) Any individual seeking confidential information contained in the court files or the court records of a proceeding made pursuant to Article 5 of this Chapter may file a written motion in the cause setting out why the information is needed. A district court judge may issue an order to disclose the confidential information sought if he finds the order is appropriate under the circumstances and if he finds that it is in the best interest of the individual admitted or committed or of the public to have the information disclosed.

(d1) After a judicial determination that an individual shall be involuntarily committed for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter, the clerk of superior court in the county where the judicial determination was made shall, as soon as practicable, cause a report of the commitment to be transmitted to the National Instant Criminal Background Check System (NICS). Reporting of an individual involuntarily committed to outpatient mental health treatment under this subsection shall only be reported if the individual is found to be a danger to self or others. The clerk shall also cause to be transmitted to NICS a record where an individual is found not guilty by reason of insanity or found mentally incompetent to proceed to criminal trial. The clerk, upon receipt of documentation that an affected individual has received a relief from disabilities pursuant to G.S. 122C-54.1 or any applicable federal law, shall cause the individual's record in NICS to be updated. The record of involuntary commitment shall be accessible only by an entity having proper access to NICS and shall remain otherwise confidential as provided by this Article. The clerk shall effect the transmissions to NICS required by the subsection according to protocols which shall be established by the Administrative Office of the Courts.

(e) Upon the request of the legally responsible person or the minor admitted or committed, and after that minor has both been released and reached adulthood, the court records of that minor made in proceedings pursuant to Article 5 of this Chapter may be expunged from the files of the court. The minor and his legally responsible person shall be informed in writing by the court of the right provided by this subsection at the time that the application for admission is filed with the court.

(f) A State facility and the psychiatric service of the University of North Carolina Hospitals at Chapel Hill may disclose confidential information to staff attorneys of the Attorney General's office whenever the information is necessary to the performance of the statutory responsibilities of the Attorney General's office or to its performance when acting as attorney for a State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill.

(g) A facility may disclose confidential information to an attorney who represents either the facility or an employee of the facility, if such information is relevant to litigation, to the operations of the facility, or to the provision of services by the facility. An employee may discuss confidential information with his attorney or with an attorney representing the facility in which he is employed.

(h) A facility shall disclose confidential information for purposes of complying with Article 3 of Chapter 7B of the General Statutes and Article 6 of Chapter 108A of the General Statutes, or as required by other State or federal law. (1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1977, c. 696, s. 1; 1979, c. 147; c. 915, s. 20; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2; 1987, c. 638, ss. 1, 3.1; 1989, c. 141, s. 9; 1993, c. 516, s. 12; 1998-202, s. 13(dd); 2003-313, s. 2; 2008-210, s. 1.)

Effect of Amendments. — Session Laws 2008-210, s. 1, effective December 1, 2008, added subsection (d1).

CASE NOTES

Disclosure of Information Authorized. — Disclosure of the decedent's substance abuse treatment information, pursuant to a trial judge's order in a medical malpractice action where the decedent's mental health and history of substance abuse were placed at issue by the decedent and later BY the decedent's executor, was authorized by the exception codified in G.S. 122C-54 as the disclosure of the information was not prohibited by 42 C.F.R. §§ 2.63(a)(3) and 2.64(d). Spangler v. Olchowski, — N.C. App. —, 654 S.E.2d 507, 2007 N.C. App. LEXIS 2575 (2007).

§ 122C-54.1. Restoration process to remove mental commitment bar.

(a) Any individual over the age of 18 may petition for the removal of the mental commitment bar to purchase, possess, or transfer a firearm when the individual no longer suffers from the condition that resulted in the individual's involuntary commitment for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12. The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment. No individual who has been found not guilty by reason of insanity may petition a court for restoration under this section.

(b) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination that either inpatient or outpatient treatment was appropriate or in the district court of the county of the petitioner's residence. An individual disqualified from firearms possession due to a comparable out-of-State mental commitment shall make application in the county of residence. The clerk of court upon receipt of the petition shall schedule a hearing using the regularly scheduled commitment court time and provide notice of the hearing to the petitioner and the district attorney. Copies of the petition must be served on the director of the inpatient and outpatient treatment facility, in-State or out-of-State, and the district attorney in the petitioner's current county of residence.

(c) The burden is on the petitioner to establish by a preponderance of the evidence that the petitioner no longer suffers from the condition that resulted in commitment and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12. The district attorney shall present any and all relevant information to the contrary. For these purposes, the district attorney may access and use any and all mental health records, juvenile records, and criminal history of the petitioner wherever maintained. The applicant must sign a release for the district attorney to receive any mental health records of the applicant. This hearing shall be closed to the public, unless the court finds that the public interest would be better served by conducting the hearing in public. If the court determines the hearing should be open to the public, upon motion by the petitioner, the court may allow for the in camera inspection of any mental health records. The court may allow the use of the record but shall restrict it from public disclosure, unless it finds that the public interest would be better served by making the record public. The district court shall enter an order that the petitioner does or does not continue to suffer from the condition that resulted in commitment and does or does not continue to pose a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12. The court shall include in its order the specific findings of fact on which it bases its decision. The decision of the district court may be appealed to the superior court for a hearing de novo. After a denial by the superior court, the applicant must wait a minimum of one year before reapplying. Attorneys designated by the Attorney General shall be available to represent the State, or assist in the representation of the State, in a restoration proceeding when requested to do so by a district attorney and approved by the Attorney General. An attorney so designated shall have all the powers of the district attorney under this section.

(d) Upon a judicial determination to grant a petition under this section, the clerk of superior court in the county where the petition was granted shall forward the order to the National Instant Criminal Background Check System (NICS) for updating of the respondent's record. (2008-210, s. 2.)

Editor's Note. — Session Laws 2008-210, s. 5, made this section effective December 1, 2008.

Session Laws 2008-210, s. 4, provides: "The Administrative Office of the Courts may use up to twenty-five thousand dollars ($25,000) of funds within its budget for the 2008-2009 fiscal year to carry out the provisions of this act."

§ 122C-56. Exceptions; research and planning.

CASE NOTES

Cited in Spangler v. Olchowski, — N.C. App. —, 654 S.E.2d 507, 2007 N.C. App. LEXIS 2575 (2007).

Article 3A.

Miscellaneous Provisions.

§ 122C-81. National accreditation benchmarks.

(a) As used in this section, the term:

(1) "National accreditation" applies to accreditation by an entity approved by the Secretary that accredits mental health, developmental disabilities, and substance abuse services.

(2) "Provider" applies to only those providers of services, including facilities, requiring national accreditation, which services are designated by the Secretary pursuant to subsection (b) of this section.

(b) The Secretary, through the Medicaid State Plan, Medicaid waiver, or rules adopted by the Secretary, shall designate the mental health, developmental disabilities, and substance abuse services that require national accreditation.

(c) Providers enrolled with the Medicaid program prior to July 1, 2008, and providing services that require national accreditation approved by the Secretary pursuant to subsection (b) of this section, shall successfully complete national accreditation requirements within three years of enrollment with the Medicaid program. Providers shall meet the following benchmarks to ensure continuity of care for consumers in the event the provider does not make sufficient progress in achieving national accreditation in a timely manner:

(1) Nine months prior to the accreditation deadline — Formal selection of an accrediting agency as documented by a letter from the agency to the provider acknowledging the provider's selection of that accrediting agency. A provider failing to meet this benchmark shall be prohibited from admitting new clients to service. If a provider fails to meet this benchmark, then the LMEs shall work with the provider to transfer all the provider's entire case load to another provider within four months of the date of the provider's failure to meet the benchmark. The transfer of the case load shall be in increments such that not fewer than twenty-five percent (25%) of the provider's total caseload shall be transferred per month. The Department shall terminate the provider's enrollment in the Medicaid program within four months of the provider's failure to meet the benchmark.

(2) Six months prior to the accreditation deadline — An on-site accreditation review scheduled by the accrediting agency as documented by a letter from the agency to the facility. A provider failing to meet this benchmark will be prohibited from admitting new clients to service. If a provider fails to meet this benchmark, then the LMEs shall work with the provider to transfer the provider's entire case load to another provider within three months of the date of the provider's failure to meet the benchmark. The transfer of the case load shall be in increments such that not fewer than thirty-three percent (33%) of the provider's total caseload shall be transferred per month. The Department shall terminate the provider's enrollment in the Medicaid program within three months of the provider's failure to meet the benchmark.

(3) Three months prior to the accreditation deadline — Completion of an on-site accreditation review, receipt of initial feedback from accrediting agency, and submission of a Plan of Correction for any deficiencies noted by the accrediting agency. A provider failing to meet this benchmark shall be prohibited from admitting new clients to service. If a provider fails to meet this benchmark, then the LMEs shall work with the provider to transfer the provider's entire case load to another provider within two months of the date of the provider's failure to meet the benchmark. The transfer of the case load shall be in increments such that not fewer than fifty percent (50%) of the provider's total caseload shall be transferred per month. The Department shall terminate the provider's enrollment in the Medicaid program within two months of the provider's failure to meet the benchmark.

(4) Accreditation deadline — Approval as fully accredited by the national accrediting agency. A provider failing to meet this requirement shall be prohibited from admitting new clients to service. The LMEs will work with a provider failing to meet this deadline to transition clients currently receiving service to other providers within 60 days. The Department shall terminate the provider's enrollment in the Medicaid program within 60 days of the provider's failure to meet the benchmark.

(5) A provider that has its enrollment terminated in the Medicaid program as a result of failure to meet benchmarks for national

accreditation or failure to continue to be nationally accredited may not apply for re-enrollment in the Medicaid program for at least one year following its enrollment termination.

(d) Providers enrolled in the Medicaid program or contracting for State-funded services on or after July 1, 2008, and providing services which require national accreditation shall successfully complete all accreditation requirements and be awarded national accreditation within one year of enrollment in the Medicaid program or within two years following the provider's first contract to deliver a State-funded service requiring national accreditation. Providers providing services that require national accreditation shall be required to discontinue service delivery and shall have their Medicaid enrollment and any service contracts terminated if they do not meet the following benchmarks for demonstrating sufficient progress in achieving national accreditation following the date of enrollment in the Medicaid program or initial contract for State-funded services:

(1) Three months — On-site accreditation review scheduled by accrediting agency as documented by a letter from the agency to the provider and completion of self-study and self-evaluation protocols distributed by the selected accrediting agency.

(2) Six months — On-site accreditation review scheduled by accrediting agency as documented by a letter from the agency to the provider.

(3) Nine months — Completion of on-site accreditation review, receipt of initial feedback from accrediting agency, plan to address any deficiencies identified developed.

(4) If a provider's Medicaid enrollment or service delivery contracts are terminated as a result of failure to meet accreditation benchmarks or failure to continue to be nationally accredited, the provider will work with the LME to transition consumers served by the provider to other service providers in an orderly fashion within 60 days of notification by the LME of such failure.

(5) A provider that has its Medicaid enrollment or service delivery contracts terminated as a result of failure to meet accreditation benchmarks or failure to continue to be nationally accredited may not reapply for enrollment in the Medicaid program or enter into any new service delivery contracts for at least one year following enrollment or contract termination. (2008-107, s. 10.15A(c).)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 2. State, County and Area Authority.

§ 122C-112.1. Powers and duties of the Secretary.

Editor's Note. —

Session Laws 2008-107, s. 10.15(h), provides: "In order to temporarily address high admissions to adult acute unit beds in the State psychiatric hospitals, the Secretary of the Department of Health and Human Services may, notwithstanding G.S. 122C-181 and G.S. 122C-112.1(a)(30), open and operate on a temporary basis up to 60 beds at the Central Regional Hospital Wake Unit on the Dorothea Dix Campus and may maintain the Wake Unit on the Dix Campus until beds become available in the system. Section 10.49(t) of S.L. 2007-323 does not apply to this subsection."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 122C-115. Duties of counties; appropriation and allocation of funds by counties and cities.

Editor's Note. —

Session Laws 2008-107, s. 10.15(aa), provides: "The Secretary of the Department of Health and Human Services shall not take any action prior to January 1, 2010, that would result in the merger or consolidation of LMEs operating on January 1, 2008, or that would establish consortia or regional arrangements for the same purpose, except that:

"(1) LMEs that do not meet the catchment area requirements of G.S. 122C-115 as of January 1, 2008, may initiate, continue, or implement the LMEs' merger or consolidation plans to overcome noncompliance with G.S. 122C-115, and

"(2) The Guilford Center for Behavioral Health and Disability Services, the Smoky Mountain Center, and the Mecklenburg County Area Mental Health, Developmental Disability and Substance Abuse Authority may continue with or implement the proposed administrative service organization under development as of March 1, 2008, for merger or consolidation of any combination of these entities."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 122C-115.4. Functions of local management entities.

(a) Local management entities are responsible for the management and oversight of the public system of mental health, developmental disabilities, and substance abuse services at the community level. An LME shall plan, develop, implement, and monitor services within a specified geographic area to ensure expected outcomes for consumers within available resources.

(b) The primary functions of an LME are designated in this subsection and shall not be conducted by any other entity unless an LME voluntarily enters into a contract with that entity under subsection (c) of this section. The primary functions include all of the following:

(1) Access for all citizens to the core services and administrative functions described in G.S. 122C-2. In particular, this shall include the implementation of a 24-hour a day, seven-day a week screening, triage, and referral process and a uniform portal of entry into care.

(2) Provider endorsement, monitoring, technical assistance, capacity development, and quality control. An LME may remove a provider's endorsement if a provider fails to meet defined quality criteria, fails to adequately document the provision of services, fails to provide required staff training, or fails to provide required data to the LME.

(3) Utilization management, utilization review, and determination of the appropriate level and intensity of services. An LME may participate in the development of person centered plans for any consumer and

shall monitor the implementation of person centered plans. An LME shall review and approve person centered plans for consumers who receive State-funded services and shall conduct concurrent reviews of person centered plans for consumers in the LME's catchment area who receive Medicaid funded services.

(4) Authorization of the utilization of State psychiatric hospitals and other State facilities. Authorization of eligibility determination requests for recipients under a CAP-MR/DD waiver.

(5) Care coordination and quality management. This function involves individual client care decisions at critical treatment junctures to assure clients' care is coordinated, received when needed, likely to produce good outcomes, and is neither too little nor too much service to achieve the desired results. Care coordination is sometimes referred to as "care management." Care coordination shall be provided by clinically trained professionals with the authority and skills necessary to determine appropriate diagnosis and treatment, approve treatment and service plans, when necessary to link clients to higher levels of care quickly and efficiently, to facilitate the resolution of disagreements between providers and clinicians, and to consult with providers, clinicians, case managers, and utilization reviewers. Care coordination activities for high-risk/high-cost consumers or consumers at a critical treatment juncture include the following:

a. Assisting with the development of a single care plan for individual clients, including participating in child and family teams around the development of plans for children and adolescents.
b. Addressing difficult situations for clients or providers.
c. Consulting with providers regarding difficult or unusual care situations.
d. Ensuring that consumers are linked to primary care providers to address the consumer's physical health needs.
e. Coordinating client transitions from one service to another.
f. Conducting customer service interventions.
g. Assuring clients are given additional, fewer, or different services as client needs increase, lessen, or change.
h. Interfacing with utilization reviewers and case managers.
i. Providing leadership on the development and use of communication protocols.
j. Participating in the development of discharge plans for consumers being discharged from a State facility or other inpatient setting who have not been previously served in the community.

(6) Community collaboration and consumer affairs including a process to protect consumer rights, an appeals process, and support of an effective consumer and family advisory committee.

(7) Financial management and accountability for the use of State and local funds and information management for the delivery of publicly funded services.

Subject to all applicable State and federal laws and rules established by the Secretary and the Commission, nothing in this subsection shall be construed to preempt or supersede the regulatory or licensing authority of other State or local departments or divisions.

(c) Subject to subsection (b) of this section and all applicable State and federal laws and rules established by the Secretary, an LME may contract with a public or private entity for the implementation of LME functions designated under subsection (b) of this section.

(d) Except as provided in G.S. 122C-124.1 and G.S. 122C-125, the Secretary may neither remove from an LME nor designate another entity as eligible to implement any function enumerated under subsection (b) of this section unless all of the following applies:

(1) The LME fails during the previous consecutive three months to achieve a satisfactory outcome on any of the critical performance measures developed by the Secretary under G.S. 122C-112.1(33).

(2) The Secretary provides focused technical assistance to the LME in the implementation of the function. The assistance shall continue for at least three months or until the LME achieves a satisfactory outcome on the performance measure, whichever occurs first.

(3) If, after three months of receiving technical assistance from the Secretary, the LME still fails to achieve or maintain a satisfactory outcome on the critical performance measure, the Secretary shall enter into a contract with another LME or agency to implement the function on behalf of the LME from which the function has been removed.

(e) Notwithstanding subsection (d) of this section, in the case of serious financial mismanagement or serious regulatory noncompliance, the Secretary may temporarily remove an LME function after consultation with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(f) The Commission shall adopt rules regarding the following matters:

(1) The definition of a high risk consumer. Until such time as the Commission adopts a rule under this subdivision, a high risk consumer means a person who has been assessed as needing emergent crisis services three or more times in the previous 12 months.

(2) The definition of a high cost consumer. Until such time as the Commission adopts a rule under this subdivision, a high cost consumer means a person whose treatment plan is expected to incur costs in the top twenty percent (20%) of expenditures for all consumers in a disability group.

(3) The notice and procedural requirements for removing one or more LME functions under subsection (d) of this section. (2006-142, s. 4(d); 2007-323, ss. 10.49(*l*), (hh); 2007-484, ss. 18, 43.7(a)-(c); 2007-504, s. 1.2; 2008-107, s. 10.15(cc).)

Community Support Providers Appeals Process. — Session Laws 2008-107, s. 10.15A(e1)-(e4), provides: "(e1) For the purpose of expediting the resolution of community support provider appeals and thereby saving State and federal funds that are paid for services that are found to be unnecessary or otherwise ineligible for payment, the Department shall implement on a temporary basis a community support provider appeals process. The process shall be a substitute for informal provider appeals at the Department level and formal provider appeals by the Office of Administrative Hearings. The community support provider appeals process shall apply to a community support services provider:

"(1) Who is aggrieved by a decision of the Department to reduce, deny, recoup, or recover reimbursement for community support services, or to deny, suspend, or revoke a provider agreement to provide community support services.

"(2) Whose endorsement has been withdrawn or whose application for endorsement has been denied by a local management entity.

"(e2) The community support provider appeals process shall be developed and implemented as follows:

"(1) A hearing under this section shall be commenced by filing a petition with the chief hearings clerk of the Department within 30 days of the mailing of the notice by the Department of the action giving rise to the contested case. The petition shall identify the petitioner, be signed by the party or representative of the party, and shall describe the agency action giving rise to the contested case. As used in this section, 'file or filing' means to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Department and acceptance thereof by the chief hearings clerk, except that the hearing officer may permit the papers to be filed with the hearing officer, in which event the hearing officer shall note thereon the filing date. The Department shall supply forms for use in these contested cases.

"(2) If there is a timely request for an appeal, the Department shall promptly designate a hearing officer who shall hold an evidentiary hearing. The hearing officer shall conduct the hearing according to applicable federal law and regulations and shall ensure that:

"a. Notice of the hearing is given not less than 15 days before the hearing. The notice shall state the date, hour, and place of the hearing and shall be deemed to have been given on the date that a copy of the notice is mailed, via certified mail, to the address provided by the petitioner in the petition for hearing.

"b. The hearing is held in Wake County, except that the hearing officer may, after consideration of the numbers, locations, and convenience of witnesses and in order to promote the ends of justice, hold the hearing by telephone or other electronic means or hold the hearing in a county in which the petitioner resides.

"c. Discovery is no more extensive or formal than that required by federal law and regulations applicable to the hearings. Prior to and during the hearing, a provider representative shall have adequate opportunity to examine the provider's own case file. No later than five days before the date of the hearing, each party to a contested case shall provide to each other party a copy of any documentary evidence that the party intends to introduce at the hearing and shall identify each witness that the party intends to call.

"(3) The hearing officer shall have the power to administer oaths and affirmations, subpoena the attendance of witnesses, rule on prehearing motions, and regulate the conduct of the hearing. The following shall apply to hearings held pursuant to this section:

"a. At the hearing, the parties may present such sworn evidence, law, and regulations as are relevant to the issues in the case.

"b. The petitioner and the respondent agency each have a right to be represented by a person of his choice, including an attorney obtained at the party's own expense.

"c. The petitioner and the respondent agency shall each have the right to cross-examine witnesses as well as make a closing argument summarizing his view of the case and the law.

"d. The appeal hearing shall be recorded. If a petition for judicial review is filed pursuant to subsection (f) of this section, a transcript will be prepared and made part of the official report and shall be prepared at no cost to the appellant. In the absence of the filing of a petition for a judicial review, no transcript will be prepared unless requested by a party, in which case each party shall bear the cost of the transcript or part thereof or copy of the transcript or part thereof requested by the party. The recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed as provided in G.S. 108A-79(i)(5).

"(4) The hearing officer shall decide the case based upon a preponderance of the evidence, giving deference to the demonstrated knowledge and expertise of the agency as provided in G.S. 150B-34(a). The hearing officer shall prepare a proposal for the decision, citing relevant law, regulations, and evidence, which shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency.

"(5) The petitioner and the respondent agency shall have 15 days from the date of the mailing of the proposal for decision to present written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who will make the final decision. If neither written arguments are presented, nor extension of time granted by the final agency decision maker for good cause, within 15 days of the date of the mailing of the proposal for decision, the proposal for decision becomes final. If written arguments are presented, such arguments shall be considered and the final decision shall be rendered. The final decision shall be rendered not more than 90 days from the date of the filing of the petition. This time limit may be extended by agreement of the parties or by final agency decision maker, for good cause shown, for an additional period of up to 30 days. The final decision shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency. In the absence of a petition for judicial review filed pursuant to subsection (f) of this section, the final decision shall be binding upon the petitioner and the Department.

"(6) A petitioner who is dissatisfied with the final decision of the Department may file, within 30 days of the service of the decision, a petition for judicial review in the Superior Court of Wake County or of the county from which the case arose. The judicial review shall be conducted according to Article 4 of Chapter 150B of the General Statutes.

"(7) In the event of a conflict between federal law or regulations and State law or regulations, federal law or regulations shall control. This section applies to all petitions that are filed by a Medicaid community support services provider on or after July 1, 2008, and for all Medicaid community support services provider petitions that have been filed at the Office of Administrative Hearings previous to July 1, 2008, but for which a hearing on the merits has not been commenced prior to that date. The requirement that the agency decision must be rendered not more than 90 days from the date of the filing of the petition for hearing shall not apply to (i) community support services provider petitions that were filed at the Office of Administrative Hearings or (ii) requests for a hearing under the Department's informal settlement process prior to the effective date of this act. The Office of Administrative Hearings shall transfer all cases affected by this section to the Department of Health and Human Services within 30 days of the effective date of this section. This act preempts the existing informal appeal process and reconsideration review process at the Department of Health and Human Services and the existing appeal process at the Office of Administrative Hearings with regard to all appeals filed by Medicaid community support services providers under the Medical Assistance program.

"(e3) Notwithstanding any other provision of law to the contrary, the Department of Health and Human Services may, pursuant to its statutory authority or federal Medicaid requirements, suspend the endorsement or Medicaid participation of a provider of community support services pending a final agency decision based on a fair hearing of the provider's appeal filed with the Department under its community support provider appeal process. A provider of community support services whose endorsement, Medicaid participation, or services have been suspended is not entitled to payment during the period the appeal is pending, and the Department shall make no such payment to the provider during that period. If the final agency decision is in favor of the provider, the Department shall remove the suspension, commence payment for provider services, and reimburse the provider for payments withheld during the period of appeal. Contracts between the Department or a local management entity and the provider shall contain a provision indicating the circumstances under which a provider may appeal an agency decision and giving notice of the suspension of payments to the provider while the appeal is pending. This subsection applies to community support provider appeals pending in the Department of Health and Human Services or the Office of Administrative Hearings, as applicable, on and after July 1, 2008.

"(e4) The Department's community support provider appeals process established under this section shall expire July 1, 2010. The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on March 1, 2009, October 1, 2009, and March 1, 2010, on the effectiveness and efficiency of the community support provider appeals process."

Session Laws 2008-107, s. 10.15A(j), provides: "The Department of Health and Human Services, Division of Medical Assistance, shall adopt a policy reducing the maximum allowable hours for community support services to eight hours per week. This subsection does not apply to community support services offered under a Medicaid managed care, capitated at-risk waiver."

Editor's Note. — Session Laws 2007-323, s. 10.49(ee), as amended by Session Laws 2008-107, s. 10.15A(i) and (k), and as amended by Session Laws 2008-118, s. 3.11, provides: "This subsection does not apply to community support services offered under a Medicaid managed care, capitated, at-risk waiver. For all other community support services, for the purpose of avoiding overutilization of community support services and overexpenditure of funds for these services, the Department of Health and Human Services shall immediately conduct an in-depth evaluation of the use and cost of community support services to identify existing and potential areas of overutilization and overexpenditure. The Department shall also adopt or revise as necessary management policies and practices that will ensure that at a minimum:

"(1) There is in place a list of community support services that are appropriate to meet the critical needs of the client and are cost effective;

"(2) Community support services are appropriately utilized based on the critical needs of the client, and utilization is monitored routinely to ensure against overutilization;

"(3) That expenditures for services are controlled to the maximum extent possible without unnecessarily impairing service quality and efficiency;

"(4) Service providers are fully competent to provide each service, to provide the service in the most efficient manner, and that services and providers meet standards of protocol adopted by the Department. To this end, endorsement shall be based on compliance with: a Medicaid service-specific checklist, rules for Mental Health, Developmental Disabilities, and Substance Abuse Services, client rights rules in community Mental Health, Developmental Disabilities, and Substance Abuse Services, the Medicaid service records manual, and other Medicaid requirements as stipulated in the participation agreement with the Division of Medical Assistance. In accordance with G.S. 122C-115.4, an LME may remove a provider's endorsement;

"(5) All community support services are subject to prior approval.

"(6) If additional hours are authorized, the LME may participate in the development of the person-centered plan as part of its care coordination and quality management function as defined in G.S. 122C-115.4. Sixty days after the tiered rates required under subsection (b) of this section have been implemented by the Department, thirty-five percent (35%) of community support services must be delivered by qualified professionals. Six months thereafter fifty percent (50%) of community support services must be delivered by qualified professionals.

"(7) Based on standards of care and practice, a stringent clinical review process for authorization of services is implemented uniformly and in accordance with State guidelines;

"(8) Additional record audits of providers are conducted on a routine basis to continually ensure compliance with Medicaid requirements;

"(9) Post-payment clinical reviews are conducted at the local level to ensure that consumers receive the appropriate level and intensity of care;

"(10) Beginning October 1, 2007, and monthly thereafter, report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The report shall include the following:

"a. The number of consumers of community support services by month, segregated by adult and child;

"b. The number of units of community support services billed and paid by month, segregated by adult and child;

"c. The amount paid for community support by month, segregated by adult and child;

"d. Of the numbers provided in sub-subdivision b. of this subdivision, identify those units provided by a qualified professional and those provided by a paraprofessional;

"e. The length of stay in community support, segregated by adult and child;

"f. The number of clinical post payment reviews conducted by LMEs and a summary of those findings;

"g. The total number of community support providers and the number of newly enrolled, re-enrolled, or terminated providers, and if available, reasons for termination;

"h. The number of community support providers that have been referred to DMA's Program Integrity Section, the Division's "Rapid Action response" committee; or the Attorney General's Office;

"i. The utilization of other, newly enhanced mental health services, including the number of consumers served by month, the number of hours billed and paid by month, and the amount expended by month;

"(11) If possible, modify the Medicaid claims payment processing system so that providers will be required to identify, by claim, whether the service was provided by a qualified professional or a paraprofessional; and

"(12) The Department of Health and Human Services and the Department of Public Instruction shall amend their Memorandum of Agreement to ensure that each local education agency develops its own list of approved providers and individual service providers authorized to provide services on campus as provided under the Federal Safe Schools Act.

"The Department shall report not later than November 1, 2007, on the list of community support services determined to be appropriate. Not later than March 1, 2008, the Department shall provide a detailed report on the implementation and status of each of the activities required by this subsection to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The report shall also include clear standards for determining local management entity capability to perform utilization review and utilization management and clear statewide standards for utilization review and utilization management. These standards shall include (i) determination of medical necessity; (ii) an authorization process that includes the use of standardized forms; (iii) concurrent review procedures; (iv) recipient appeals process; (v) minimum staffing requirements; (vi) requirements for data collection and reporting; and (vi) performance criteria for the LMEs and outside vendor.

"In order to ensure full compliance with the laws of this State on the implementation of mental health reform, the Department shall, by January 1, 2008, adopt statewide standardized authorization procedures and processes for Medicaid utilization review. Before July 1, 2008, (i) up to six LMEs that meet those standards (not including LMEs approved for 1915(b) waivers) may, under contract with the outside vendor, complete the utilization review process for enhanced benefit and CAP MR/DD services for the LMEs' respective catchment areas; (ii) the Department shall have a process outlined that would enable all other LMEs to meet the standards required for completing the utilization review process under contract with the outside vendor; (iii) the Department shall report on the implementation of utilization review, including the utilization review process, subcontract details, and funding levels, to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. The Department shall ensure that all

Medicaid utilization review contracts with outside vendors, as required under this subsection, that are executed, renewed, or extended after the effective date of this act, are in compliance with and do not impair, interfere with, or otherwise prohibit the implementation of this subsection. Prior to renewing, extending, or entering into a contract with an outside vendor for utilization review under this subsection, the Department shall consult with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services."

Session Laws 2008-107, s. 10.15A(b), provides: "In order to ensure accountability for services provided and funds expended for community services, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall develop a tiered rate structure to replace the blended rate currently used for community support services. Under the new tiered structure, services that are necessary but do not require the skill, education, or knowledge of a qualified professional should not be paid at the same rate as services provided by qualified skilled professionals. The Department shall not implement the tiered rate structure until 15 days after it has notified the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The Department shall report on the development of the structure to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services not later than October 1, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 10.15(cc), effective July 1, 2008, inserted "consecutive" in subdivision (d)(1); and substituted "three" for "six" in subdivisions (d)(3) and (d)(4).

§ 122C-124.1. Actions by the Secretary when area authority or county program is not providing minimally adequate services.

(a) Notice of Likelihood of Action. — When the Secretary determines that there is a likelihood of suspension of funding, assumption of service delivery or management functions, or appointment of a caretaker board under this section within the ensuing 60 days, the Secretary shall so notify in writing the area authority board or the county program and the board of county commissioners of the area authority or county program. The notice shall state the particular deficiencies in program services or administration that must be remedied to avoid action by the Secretary under this section. The area authority board or county program shall have 60 days from the date it receives notice under this subsection to take remedial action to correct the deficiencies. The Secretary shall provide technical assistance to the area authority or county program in remedying deficiencies.

(b) Suspension of Funding; Assumption of Service Delivery or Management Functions. — If the Secretary determines that a county, through an area authority or county program, is not providing minimally adequate services to persons in need in a timely manner, or fails to demonstrate reasonable efforts to do so, the Secretary, after providing written notification of the Secretary's intent to the area authority or county program and to the board of county commissioners of the area authority or county program, and after providing the area authority or county program and the boards of county commissioners of the area authority or county program an opportunity to be heard, may:

(1) Withhold funding for the particular service or services in question from the area authority or county program and ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department.

Upon suspension of funding, the Department shall direct the development and oversee implementation of a corrective plan of action and provide notification to the area authority or county program and the board of county commissioners of the area authority or county program of any ongoing concerns or problems with the area authority's or county program's finances or delivery of services.

(2) Assume control of the particular service or management functions in question or of the area authority or county program and appoint an administrator to exercise the powers assumed. This assumption of control shall have the effect of divesting the area authority or county program of its powers in G.S. 122C-115.1 and G.S. 122C-117 and all other service delivery powers conferred on the area authority or county program by law as they pertain to this service or management function. County funding of the area authority or county program shall continue when the State has assumed control of the catchment area or of the area authority or county program. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority or county program.

Upon assumption of control of service delivery or management functions, the Department shall, in conjunction with the area authority or county program, develop and implement a corrective plan of action and provide notification to the area authority or county program and the board of county commissioners of the area authority or county program of the plan. The Department shall also keep the area authority board and the board of county commissioners informed of any ongoing concerns or problems with the delivery of services.

(c) Appointment of Caretaker Administrator. — In the event that a county, through an area authority or county program, fails to comply with the corrective plan of action required when funding is suspended or when the State assumes control of service delivery or management functions, the Secretary, after providing written notification of the Secretary's intent to the area authority or county program and the applicable participating boards of county commissioners of the area authority or county program, shall appoint a caretaker administrator, a caretaker board of directors, or both.

The Secretary may assign any of the powers and duties of the area director or program director or of the area authority board or board of county commissioners of the area authority or county program pertaining to the operation of mental health, developmental disabilities, and substance abuse services to the caretaker board or to the caretaker administrator as it deems necessary and appropriate to continue to provide direct services to clients, including the powers as to the adoption of budgets, expenditures of money, and all other financial powers conferred on the area authority or county program by law pertaining to the operation of mental health, developmental disabilities, and substance abuse services. County funding of the area authority or county program shall continue when the State has assumed control of the financial affairs of the program. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority or county program. The caretaker administrator and the caretaker board shall perform all of these powers and duties. The Secretary may terminate the area director or program director when it appoints a caretaker administrator. Chapter 150B of the General Statutes shall apply to the decision to terminate the area director or program director. Neither party to any such contract shall be entitled to damages. After a caretaker board has been appointed, the General Assembly shall consider, at its next regular session, the future governance of the identified area authority or county program. (2001-437, s. 1.13(b); 2008-107, s. 10.15(ee).)

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 10.15(ee), effective July 1, 2008, deleted "in accordance with rules adopted by the Secretary or the Commission" following "minimally adequate services" in the introductory language of subsection (b).

Part 4. Area Facilities.

§ 122C-142.1. Substance abuse services for those convicted of driving while impaired or driving while less than 21 years old after consuming alcohol or drugs.

(a) Services. — An area authority shall provide, directly or by contract, the substance abuse services needed by a person to obtain a certificate of completion required under G.S. 20-17.6 as a condition for the restoration of a drivers license. A person may obtain the required services from an area facility, from a private facility authorized by the Department to provide this service, or, with the approval of the Department, from an agency that is located in another state.

(a1) Authorization of a Private Facility Provider. — The Department shall authorize a private facility located in this State to provide substance abuse services needed by a person to obtain a certificate of completion if the private facility complies with all of the requirements of this subsection:

(1) Notifies both the designated area facility for the catchment area in which it is located and the Department of its intent to provide the services.

(2) Agrees to comply with the laws and rules concerning these services that apply to area facilities.

(3) Pays the Department the applicable fee for authorizing and monitoring the services of the facility. The initial fee is payable at the time the facility notifies the Department of its intent to provide the services and by July 1 of each year thereafter. Collected fees shall be used by the Division for program monitoring and quality assurance. The applicable fee is based upon the number of assessments completed during the prior fiscal year as set forth below:

Number of Assessments	Fee Amount
0-24	$250.00
25-99	$500.00
100 or more	$750.00.

(b) Assessments.— To conduct a substance abuse assessment, a facility shall give a client a standardized test approved by the Department to determine chemical dependency and shall conduct a clinical interview with the client. Based on the assessment, the facility shall recommend that the client either attend an alcohol and drug education traffic (ADET) school or obtain treatment. A recommendation shall be reviewed and signed by a certified alcoholism, drug abuse, or substance abuse counselor, as defined by the Commission, a Certified Substance Abuse Counselor, or by a physician certified by the American Society of Addiction Medicine (ASAM). The signature on the recommendation shall be the personal signature of the individual authorized to review the recommendation and not the signature of his or her agent. The signature shall reflect that the authorized individual has personally reviewed the recommendation and, with full knowledge of the contents of the recommendation, approved of the recommended treatment.

G.S. 122C-142.1(f) is set out twice. See note.

(b1) Persons Authorized to Conduct Assessments. — The following individuals are authorized to conduct a substance abuse assessment under subsection (b) of this section:

(1) A Certified Substance Abuse Counselor (CSAC), as defined by the Commission.
(2) A Licensed Clinical Addiction Specialist (LCAS), as defined by the Commission.
(3) Repealed by Session Laws 2004-197, s. 2, effective October 1, 2008, and applicable to substance abuse assessments conducted on or after that date.
(4) A person licensed by the North Carolina Medical Board or the North Carolina Psychology Board.
(5) A physician certified by the American Society of Addiction Medicine (ASAM).

(c) School or Treatment. — Attendance at an ADET school is required if none of the following applies and completion of a treatment program is required if any of the following applies:

(1) The person took a chemical test at the time of the offense that caused the person's license to be revoked and the test revealed that the person had an alcohol concentration at any relevant time after driving of at least 0.15.
(2) The person has a prior conviction of an offense involving impaired driving.
(3) The substance abuse assessment identifies a substance abuse disability.

(d) Standards. — An ADET school shall offer the curriculum established by the Commission and shall comply with the rules adopted by the Commission. A substance abuse treatment program offered to a person who needs the program to obtain a certificate of completion shall comply with the rules adopted by the Commission.

(d1) Persons Authorized to Provide Instruction. — Beginning January 1, 2009, individuals who provide ADET school instruction as a Department-authorized ADETS instructor must have at least one of the following qualifications:

(1) A Certified Substance Abuse Counselor (CSAC), as defined by the Commission.
(2) A Licensed Clinical Addictions Specialist (LCAS), as defined by the Commission.
(3) A Certified Substance Abuse Prevention Consultant (CSAPC), as defined by the Commission.

(e) Certificate of Completion. — Any facility that issues a certificate of completion shall forward the original certificate of completion to the Department. The Department shall review the certificate of completion for accuracy and completeness. If the Department finds the certificate of completion to be accurate and complete, the Department shall forward it to the Division of Motor Vehicles of the Department of Transportation. If the Department finds the certificate of completion is not accurate or complete, the Department shall return the certificate of completion to the area facility for appropriate action.

(f) **(See note for expiration date)** Fees. — A person who has a substance abuse assessment conducted for the purpose of obtaining a certificate of completion shall pay to the assessing agency a fee of one hundred dollars ($100). A person shall pay to a treatment facility or school a fee of seventy-five dollars ($75.00). If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee.

G.S. 122C-142.1(f) is set out twice. See note.

A facility that provides to a person who is required to obtain a certificate of completion a substance abuse assessment, an ADET school, or a substance abuse treatment program may require the person to pay a fee required by this subsection before it issues a certificate of completion. As stated in G.S. 122C-146, however, an area facility may not deny a service to a person because the person is unable to pay.

An area facility shall remit to the Department five percent (5%) of each fee paid to the area facility under this subsection by a person who attends an ADET school conducted by the area facility. The Department may use amounts remitted to it under this subsection only to support, evaluate, and administer ADET schools.

(f) **(See note for effective date)** Fees. — A person who has a substance abuse assessment conducted for the purpose of obtaining a certificate of completion shall pay to the assessing agency a fee of one hundred dollars ($100). A person shall pay to a school a fee of one hundred sixty dollars ($160.00). A person shall pay to a treatment facility a fee of seventy-five dollars ($75.00). If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee.

A facility that provides to a person who is required to obtain a certificate of completion a substance abuse assessment, an ADET school, or a substance abuse treatment program may require the person to pay a fee required by this subsection before it issues a certificate of completion. As stated in G.S. 122C-146, however, an area facility may not deny a service to a person because the person is unable to pay.

A facility shall remit to the Department ten percent (10%) of each fee paid to the facility under this subsection by a person who attends an ADET school conducted by the facility. The Department may use amounts remitted to it under this subsection only to support, evaluate, and administer ADET schools.

(f1) Multiple Assessments. — If a person has more than one offense for which a certificate of completion is required under G.S. 20-17.6, the person shall pay the assessment fee required under subsection (f) of this section for each certificate of completion required. However, the facility shall conduct only one substance abuse assessment and recommend only one ADET school or treatment program for all certificates of completion required at that time, and the person shall pay the fee required under subsection (f) of this section for only one school or treatment program.

If any of the criteria in subdivisions (c)(1), (c)(2), or (c)(3) of this section are present in any of the offenses for which the person needs a certificate of completion, completion of a treatment program shall be required pursuant to subsection (c) of this section.

The provisions of this subsection do not apply to subsequent assessments performed after a certificate of completion has already been issued for a previous assessment.

(g) Out-of-State Services. — A person may obtain a substance abuse service needed to obtain a certificate of completion from a provider located in another state if the service offered by that provider is substantially similar to the service offered by a provider located in this State. A person who obtains a service from a provider located in another state is responsible for paying any fees imposed by the provider.

(h) Rules. — The Commission may adopt rules to implement this section. In developing rules for determining when a person needs to be placed in a substance abuse treatment program, the Commission shall consider diagnostic criteria such as those contained in the most recent revision of the Diagnostic and Statistical Manual or used by the American Society of Addiction Medicine (ASAM).

(i) Report. — The Department shall submit an annual report on substance abuse assessments to the Joint Legislative Commission on Governmental Operations. The report is due by February 1. Each facility that provides services needed by a person to obtain a certificate of completion shall file an annual report with the Department by October 1 that contains the information the Department needs to compile the report the Department is required to submit under this section.

The report submitted to the Joint Legislative Commission on Governmental Operations shall include all of the following information and any other information requested by that Commission:

(1) The number of persons required to obtain a certificate of completion during the previous fiscal year as a condition of restoring the person's drivers license under G.S. 20-17.6.

(2) The number of substance abuse assessments conducted during the previous fiscal year for the purpose of obtaining a certificate of completion.

(3) Of the number of assessments reported under subdivision (2) of this subsection, the number recommending attendance at an ADET school, the number recommending treatment, and, for those recommending treatment, the level of treatment recommended.

(4) Of the number of persons recommended for an ADET school or treatment under subdivision (3) of this subsection, the number who completed the school or treatment.

(5) The number of substance abuse assessments conducted by each facility and, of these assessments, the number that recommended attendance at an ADET school and the number that recommended treatment.

(6) The fees paid to a facility for providing services for persons to obtain a certificate of completion and the facility's costs in providing those services.

(j) The Department shall establish an outcomes evaluation study on the effectiveness of substance abuse services provided to persons who obtain a certificate of completion under G.S. 20-17.6 as a condition for restoration of a drivers license. The findings of the study shall be reported every two years to the Joint Legislative Commission on Governmental Operations. The Department shall submit an initial report on the findings of the study to the Commission no later than December 31, 2007, and shall submit a report to the Commission every two years following that date. (1995, c. 496, ss. 10, 13; 2001-370, s. 9; 2003-396, ss. 1, 3, 4; 2004-197, ss. 1, 2, 3; 2005-312, ss. 1, 2, 4; 2008-130, ss. 7, 8.)

Subsection (f) Set Out Twice. — The first version of subsection (f) set out above is effective until rules adopted pursuant to Session Laws 2005-312, s. 3, become effective. The second version of subsection (f) set out above is effective thereafter.

Effect of Amendments. —

Session Laws 2008-130, ss. 7 and 8, effective July 28, 2008, in subdivision (b1)(2), substituted "Licensed" for "Certified" and substituted "(LCAS)" for "(CCAS)"; made minor grammatical changes throughout subsection (d1); and in subdivision (d1)(2), substituted "Licensed" for "Certified," substituted "Addictions" for "Addiction," and substituted "(LCAS)" for "(CCAS)."

§ 122C-151.4. Appeal to State MH/DD/SA Appeals Panel.

(a) Definitions. — The following definitions apply in this section:

(1) "Appeals Panel" means the State MH/DD/SA Appeals Panel established under this section.

(1a) "Client" means an individual who is admitted to or receiving public services from an area facility. "Client" includes the client's personal representative or designee.

(1b) "Contract" means a contract with an area authority or county program to provide services, other than personal services, to clients and other recipients of services.

(2) "Contractor" means a person who has a contract or who had a contract during the current fiscal year, or whose application for endorsement has been denied by an area authority or county program.

(3) "Former contractor" means a person who had a contract during the previous fiscal year.

(b) Appeals Panel. — The State MH/DD/SA Appeals Panel is established. The Panel shall consist of three members appointed by the Secretary. The Secretary shall determine the qualifications of the Panel members. Panel members serve at the pleasure of the Secretary.

(c) Who Can Appeal. — The following persons may appeal to the State MH/DD/SA Appeals Panel after having exhausted the appeals process at the appropriate area authority or county program:

(1) A contractor or a former contractor who claims that an area authority or county program is not acting or has not acted within applicable State law or rules in denying the contractor's application for endorsement or in imposing a particular requirement on the contractor on fulfillment of the contract;

(2) A contractor or a former contractor who claims that a requirement of the contract substantially compromises the ability of the contractor to fulfill the contract;

(3) A contractor or former contractor who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided by the contractor or former contractor;

(4) A client or a person who was a client in the previous fiscal year, who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided to the client directly by the area authority or county program; and

(5) A person who claims that an area authority or county program did not comply with a State law or a rule adopted by the Secretary or the Commission in developing the plans and budgets of the area authority or county program and that the failure to comply has adversely affected the ability of the person to participate in the development of the plans and budgets.

(d) Hearing. — All members of the State MH/DD/SA Appeals Panel shall hear an appeal to the Panel. An appeal shall be filed with the Panel within the time required by the Secretary and shall be heard by the Panel within the time required by the Secretary. A hearing shall be conducted at the place determined in accordance with the rules adopted by the Secretary. A hearing before the Panel shall be informal; no sworn testimony shall be taken and the rules of evidence do not apply. The person who appeals to the Panel has the burden of proof. The Panel shall not stay a decision of an area authority during an appeal to the Panel.

(e) Decision. — The State MH/DD/SA Appeals Panel shall make a written decision on each appeal to the Panel within the time set by the Secretary. A decision may direct a contractor, an area authority, or a county program to take an action or to refrain from taking an action, but it shall not require a party to the appeal to pay any amount except payment due under the contract. In making a decision, the Panel shall determine the course of action that best protects or benefits the clients of the area authority or county program. If a party to an appeal fails to comply with a decision of the Panel and the Secretary determines that the failure deprives clients of the area authority or county program of a type of needed service, the Secretary may use funds previously allocated to the area authority or county program to provide the service.

(f) Chapter 150B Appeal. — A person who is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-2(1a), an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the State MH‡/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program. The Secretary shall make a final decision in the contested case.

(g) This section does not apply to providers of community support services who appeal directly to the Department of Health and Human Services under the Department's community support provider appeal process. (1993, c. 321, s. 220(o); 2001-437, s. 1.17(c); 2008-107, s. 10.15A(h).)

Community Support Providers Appeals Process. — Session Laws 2008-107, s. 10.15A(e1)-(e4), provides: "(e1) For the purpose of expediting the resolution of community support provider appeals and thereby saving State and federal funds that are paid for services that are found to be unnecessary or otherwise ineligible for payment, the Department shall implement on a temporary basis a community support provider appeals process. The process shall be a substitute for informal provider appeals at the Department level and formal provider appeals by the Office of Administrative Hearings. The community support provider appeals process shall apply to a community support services provider:

"(1) Who is aggrieved by a decision of the Department to reduce, deny, recoup, or recover reimbursement for community support services, or to deny, suspend, or revoke a provider agreement to provide community support services.

"(2) Whose endorsement has been withdrawn or whose application for endorsement has been denied by a local management entity.

"(e2) The community support provider appeals process shall be developed and implemented as follows:

"(1) A hearing under this section shall be commenced by filing a petition with the chief hearings clerk of the Department within 30 days of the mailing of the notice by the Department of the action giving rise to the contested case. The petition shall identify the petitioner, be signed by the party or representative of the party, and shall describe the agency action giving rise to the contested case. As used in this section, 'file or filing' means to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Department and acceptance thereof by the chief hearings clerk, except that the hearing officer may permit the papers to be filed with the hearing officer, in which event the hearing officer shall note thereon the filing date. The Department shall supply forms for use in these contested cases.

"(2) If there is a timely request for an appeal, the Department shall promptly designate a hearing officer who shall hold an evidentiary hearing. The hearing officer shall conduct the hearing according to applicable federal law and regulations and shall ensure that:

"a. Notice of the hearing is given not less than 15 days before the hearing. The notice shall state the date, hour, and place of the hearing and shall be deemed to have been given on the date that a copy of the notice is mailed, via certified mail, to the address provided by the petitioner in the petition for hearing.

"b. The hearing is held in Wake County, except that the hearing officer may, after consideration of the numbers, locations, and convenience of witnesses and in order to promote the ends of justice, hold the hearing by telephone or other electronic means or hold the hearing in a county in which the petitioner resides.

"c. Discovery is no more extensive or formal than that required by federal law and regulations applicable to the hearings. Prior to and during the hearing, a provider representative shall have adequate opportunity to examine the provider's own case file. No later than five days before the date of the hearing, each party to a contested case shall provide to each other party a copy of any documentary evidence that the party intends to introduce at the hearing and shall identify each witness that the party intends to call.

"(3) The hearing officer shall have the power to administer oaths and affirmations, subpoena the attendance of witnesses, rule on prehearing motions, and regulate the conduct of the hearing. The following shall apply to hearings held pursuant to this section:

"a. At the hearing, the parties may present such sworn evidence, law, and regulations as are relevant to the issues in the case.

"b. The petitioner and the respondent agency each have a right to be represented by a person of his choice, including an attorney obtained at the party's own expense.

"c. The petitioner and the respondent agency shall each have the right to cross-examine witnesses as well as make a closing argument summarizing his view of the case and the law.

"d. The appeal hearing shall be recorded. If a petition for judicial review is filed pursuant to subsection (f) of this section, a transcript will be prepared and made part of the official report and shall be prepared at no cost to the appellant. In the absence of the filing of a petition for a judicial review, no transcript will be prepared unless requested by a party, in which case each party shall bear the cost of the transcript or part thereof or copy of the transcript or part thereof requested by the party. The recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed as provided in G.S. 108A-79(i)(5).

"(4) The hearing officer shall decide the case based upon a preponderance of the evidence, giving deference to the demonstrated knowledge and expertise of the agency as provided in G.S. 150B-34(a). The hearing officer shall prepare a proposal for the decision, citing relevant law, regulations, and evidence, which shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency.

"(5) The petitioner and the respondent agency shall have 15 days from the date of the mailing of the proposal for decision to present written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who will make the final decision. If neither written arguments are presented, nor extension of time granted by the final agency decision maker for good cause, within 15 days of the date of the mailing of the proposal for decision, the proposal for decision becomes final. If written arguments are presented, such arguments shall be considered and the final decision shall be rendered. The final decision shall be rendered not more than 90 days from the date of the filing of the petition. This time limit may be extended by agreement of the parties or by final agency decision maker, for good cause shown, for an additional period of up to 30 days. The final decision shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency. In the absence of a petition for judicial review filed pursuant to subsection (f) of this section, the final decision shall be binding upon the petitioner and the Department.

"(6) A petitioner who is dissatisfied with the final decision of the Department may file, within 30 days of the service of the decision, a petition for judicial review in the Superior Court of Wake County or of the county from which the case arose. The judicial review shall be conducted according to Article 4 of Chapter 150B of the General Statutes.

"(7) In the event of a conflict between federal law or regulations and State law or regulations, federal law or regulations shall control. This section applies to all petitions that are filed by a Medicaid community support services provider on or after July 1, 2008, and for all Medicaid community support services provider petitions that have been filed at the Office of Administrative Hearings previous to July 1, 2008, but for which a hearing on the merits has not been commenced prior to that date. The requirement that the agency decision must be rendered not more than 90 days from the date of the filing of the petition for hearing shall not apply to (i) community support services provider petitions that were filed at the Office of Administrative Hearings or (ii) requests for a hearing under the Department's informal settlement process prior to the effective date of this act. The Office of Administrative Hearings shall transfer all cases affected by this section to the Department of Health and Human Services within 30 days of the effective date of this section. This act preempts the existing informal appeal process and reconsideration review process at the Department of Health and Human Services and the existing appeal process at the Office of Administrative Hearings with regard to all appeals filed by Medicaid community support services providers under the Medical Assistance program.

"(e3) Notwithstanding any other provision of law to the contrary, the Department of Health and Human Services may, pursuant to its statutory authority or federal Medicaid requirements, suspend the endorsement or Medicaid participation of a provider of community support services pending a final agency decision based on a fair hearing of the provider's appeal filed with the Department under its community support provider appeal process. A provider of community support services whose endorsement, Medicaid participation, or services have been suspended is not entitled to payment during the period the appeal is pending, and the Department shall make no such payment to the provider during that period. If the final agency decision is in favor of the provider, the Department shall remove the suspension, commence payment for provider services, and reimburse the provider for payments withheld during the period of appeal. Contracts between the Department or a local management entity and the provider shall contain a provision indicating the circumstances under which a provider may appeal an agency decision and giving notice of the suspension of payments to the provider while the appeal is pending. This subsection applies to community support provider appeals pending in the Department of Health and Human Services or the Office of Administrative Hearings, as applicable, on and after July 1, 2008.

"(e4) The Department's community support provider appeals process established under this section shall expire July 1, 2010. The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on March 1, 2009, October 1, 2009, and March 1, 2010, on the effectiveness and efficiency of the community support provider appeals process."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 10.15A(h), effective July 1, 2008, inserted "or whose application for endorsement has been denied by an area authority or county program" in subdivision (a)(2); inserted "denying the contractor's application for endorsement or in" in subdivision (c)(1); added the third sentence in subsection (f); and added subsection (g).

Part 5. State Facilities.

§ 122C-181. Secretary's jurisdiction over State facilities.

Editor's Note. —

Session Laws 2008-107, s. 10.15(h), provides: "In order to temporarily address high admissions to adult acute unit beds in the State psychiatric hospitals, the Secretary of the Department of Health and Human Services may, notwithstanding G.S. 122C-181 and G.S. 122C-112.1(a)(30), open and operate on a temporary basis up to 60 beds at the Central Regional Hospital Wake Unit on the Dorothea Dix Campus and may maintain the Wake Unit on the Dix Campus until beds become available in the system. Section 10.49(t) of S.L. 2007-323 does not apply to this subsection."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 5.

Procedures for Admission and Discharge of Clients.

Part 1. General Provisions.

§ 122C-210.1. Immunity from liability.

CASE NOTES

Plaintiff Must Allege Gross or Intentional Negligence or Immunity Will Preclude Claim. —

Because there was a question of fact as to whether defendant rehabilitation center and its chief operating officer followed the applicable standard of care, they were not entitled to qualified immunity under G.S. 122C-210.1 on plaintiff's wrongful death claims as a matter of law; plaintiff alleged facts that defendants had violated accepted professional judgment, practice and standards, an investigative report from the North Carolina Division of Facility Services found that the facility had failed to adequately supervise plaintiff's brother, and plaintiff's complaint was certified by an expert under N.C. R. Civ. P. 9(j) that the medical care outlined in the complaint did not comply with the applicable standard of care. Snyder v. Learning Servs. Corp., — N.C. App. —, 653 S.E.2d 548, 2007 N.C. App. LEXIS 2454 (2007).

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

§ 122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.

CASE NOTES

Denial of Gun Permit Not Warranted. — G.S. 14-404(c)(4) did not support the denial of a gun permit application to an applicant since the G.S. 122C-261(e), 122C-262 122C-263, 122C-266, and 122C-268 requirements were not met, even though the applicant was taken for an involuntary psychiatric examination when the applicant was 21 years old; neither inpatient nor outpatient commitment was recommended. Waldron v. Batten, — N.C. App. —, 662 S.E.2d 568, 2008 N.C. App. LEXIS 1193 (July 1, 2008).

§ 122C-262. Special emergency procedure for individuals needing immediate hospitalization.

CASE NOTES

Denial of Gun Permit Not Warranted. — G.S. 14-404(c)(4) did not support the denial of a gun permit application to an applicant since the G.S. 122C-261(e), 122C-262 122C-263, 122C-266, and 122C-268 requirements were not met, even though the applicant was taken for an involuntary psychiatric examination when the applicant was 21 years old; neither inpatient nor outpatient commitment was recommended. Waldron v. Batten, — N.C. App. —, 662 S.E.2d 568, 2008 N.C. App. LEXIS 1193 (July 1, 2008).

§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

CASE NOTES

Denial of Gun Permit Not Warranted. — G.S. 14-404(c)(4) did not support the denial of a gun permit application to an applicant since the G.S. 122C-261(e), 122C-262 122C-263, 122C-266, and 122C-268 requirements were not met, even though the applicant was taken for an involuntary psychiatric examination when the applicant was 21 years old; neither inpatient nor outpatient commitment was recommended. Waldron v. Batten, — N.C. App. —, 662 S.E.2d 568, 2008 N.C. App. LEXIS 1193 (July 1, 2008).

§ 122C-266. Inpatient commitment; second examination and treatment pending hearing.

CASE NOTES

Denial of Gun Permit Not Warranted. — G.S. 14-404(c)(4) did not support the denial of a gun permit application to an applicant since the G.S. 122C-261(e), 122C-262 122C-263, 122C-266, and 122C-268 requirements were not met, even though the applicant was taken for an involuntary psychiatric examination when the applicant was 21 years old; neither inpatient nor outpatient commitment was recommended. Waldron v. Batten, — N.C. App. —, 662 S.E.2d 568, 2008 N.C. App. LEXIS 1193 (July 1, 2008).

§ 122C-268. Inpatient commitment; district court hearing.

CASE NOTES

Denial of Gun Permit Not Warranted. — G.S. 14-404(c)(4) did not support the denial of a gun permit application to an applicant since the G.S. 122C-261(e), 122C-262 122C-263, 122C-266, and 122C-268 requirements were not met, even though the applicant was taken for an involuntary psychiatric examination when the applicant was 21 years old; neither inpatient nor outpatient commitment was recommended. Waldron v. Batten, — N.C. App. —, 662 S.E.2d 568, 2008 N.C. App. LEXIS 1193 (July 1, 2008).

Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

§ 122C-281. Affidavit and petition before clerk or magistrate; custody order.

CASE NOTES

Cited in Waldron v. Batten, — N.C. App. —, 662 S.E.2d 568, 2008 N.C. App. LEXIS 1193 (July 1, 2008).

Article 6.

Special Provisions.

Part 2A. Broughton Hospital Joint Security Force.

§ 122C-430. Joint security force.

The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Broughton Hospital, North Carolina School for the Deaf at Morganton (K-12), Western Regional Vocational Rehabilitation Facility, J. Iverson Riddle Developmental Center, and the surrounding grounds and land adjacent to Broughton Hospital allocated to the Department of Agriculture and Consumer Services, all in Burke County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named facilities. These special police officers may arrest persons outside the territory of the named institutions but within the confines of Burke County when the person arrested has committed a criminal offense within that territory for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory. (1997-320, s. 1; 2007-177, s. 3; 2008-187, s. 30.)

Effect of Amendments. — Session Laws 2007-177, s. 3, as amended by Session Laws 2008-187, s. 30, effective August 7, 2008, substituted "North Carolina School for the Deaf at Morganton (K-12)" for "North Carolina School for the Deaf" and "J. Iverson Riddle Developmental Center" for "Western Carolina Center."

Chapter 126.

State Personnel System.

Article 1.

State Personnel System Established.

Sec.

126-5. Employees subject to Chapter; exemptions.

Article 7.

The Privacy of State Employee Personnel Records.

126-22. Personnel files not subject to inspection under § 132-6.

Article 14.

Protection for Reporting Improper Government Activities.

Sec.

126-85. Protection from retaliation.

Article 1.

State Personnel System Established.

§ 126-1. Purpose of Chapter; application to local employees.

CASE NOTES

Cited in Steward v. Green, — N.C. App. —, 657 S.E.2d 719, 2008 N.C. App. LEXIS 423 (2008).

§ 126-4. Powers and duties of State Personnel Commission.

Editor's Note. —

Session Laws 2008-82, ss. 1 and 2, provide: "Section 1. Pursuant to G.S. 150B-21.3(b1), 25 NCAC 01C.0216 (Temporary Employment Services), 25 NCAC 01C.0217 (Office of State Personnel Temporary Employment Service), 25 NCAC 01C.0405 (Temporary Appointment), and 25 NCAC 01C.0407 (Temporary Part-Time Appointment) as adopted by the State Personnel Commission on February 16, 2007, and approved by the Rules Review Commission on May 17, 2007, are disapproved.

"Section 2. The Office of State Personnel shall conduct a thorough analysis of the use of nonpermanent employees by State agencies, including:

"(1) The number of nonpermanent employees currently working in State agencies.

"(2) The position classifications of nonpermanent employees.

"(3) The average duration of nonpermanent appointments.

"(4) The length of time during which nonpermanent employees have been used to meet agency personnel needs in each category of position for which they have been used.

"(5) The various categories of nonpermanent employees currently being utilized by agencies, including temporary, seasonal, intermittent, time-limited, and contract.

"(6) The number of current nonpermanent employees who are actually seeking full-time permanent employment with full benefits, including retirement and health insurance, versus those who either do not need or are not seeking employment with benefits.

"The Office of State Personnel shall use the results of the analysis to develop recommendations for definitions to distinguish various categories of nonpermanent employment and policies regarding the selection, appointment, and duration of various categories of nonpermanent employment. In developing its recommendations, the Office of State Personnel shall seek input from any interested parties outside of State government. The recommendations shall also include a prohibition against the establishment of any new temporary employment services by individual State agencies, other than those in existence on the effective date of this act. The Office of State Personnel shall submit its findings to the General Assembly, including any recommendations for proposed legislation, on or before December 31, 2008.

"To the extent it accepts the recommendations of the Office of State Personnel, the State Personnel Commission shall adopt rules in accordance with Chapter 150B of the General Statutes to implement a plan for nonpermanent employment in State government."

Session Laws 2008-107, s. 26.12B, provides: "(a) Notwithstanding the provisions of G.S. 126-4(10), the sum of up to five hundred thousand dollars ($500,000) for the 2008-2009 fiscal year may be used by the Department of Health and Human Services to pay sign-on bonuses to newly employed registered nurses hired during the fiscal year to work in State operated facilities in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

"(b) These sign-on bonuses may not exceed:

"(1) $8,000 per full-time registered nurse or

"(2) $4,000 per part-time registered nurse hired to work at least 20 hours but less than 30 hours per week.

"One-half of the sign-on bonus shall be paid in the employee's first paycheck with the second installment to be paid after the completion of 36 months of consecutive State service as a registered nurse in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. Employees whose performance ratings, at any time, are not rated at or above level three on the five-level rating scale, or who have documented disciplinary actions for misconduct or performance, shall be ineligible for the second installment of the sign-on bonus.

"(c) Employees who terminate, either voluntarily or involuntarily, before the completion of 36 months of consecutive service shall repay a prorated amount of the sign-on bonus as determined by the Secretary of the Department of Health and Human Services."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 126-5. Employees subject to Chapter; exemptions.

(a) The provisions of this Chapter shall apply to:

(1) All State employees not herein exempt, and

(2) All employees of the following local entities:

a. Area mental health, developmental disabilities, and substance abuse authorities.

b. Local social services departments.

c. County health departments and district health departments.

d. Local emergency management agencies that receive federal grant-in-aid funds.

An employee of a consolidated county human services agency created pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed in this subdivision.

(3) County employees not included under subdivision (2) of this subsection as the several boards of county commissioners may from time to time determine.

(b) As used in this section:

(1) "Exempt position" means an exempt managerial position or an exempt policymaking position.

(2) "Exempt managerial position" means a position delegated with significant managerial or programmatic responsibility that is essential to the successful operation of a State department, agency, or division, so that the application of G.S. 126-35 to an employee in the position would cause undue disruption to the operations of the agency, department, institution, or division.

(3) "Exempt policymaking position" means a position delegated with the authority to impose the final decision as to a settled course of action to be followed within a department, agency, or division, so that a loyalty

to the Governor or other elected department head in their respective offices is reasonably necessary to implement the policies of their offices. The term shall not include personnel professionals.

(4) "Personnel professional" means any employee in a State department, agency, institution, or division whose primary job duties involve administrative personnel and human resources functions for that State department, agency, institution, or division.

(c) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) A State employee who is not a career State employee as defined by this Chapter.

(2) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.

(3) Employees in exempt policymaking positions designated pursuant to G.S. 126-5(d).

(4) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of such department head during his absence or incapacity.

(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.

(2) Officers and employees of the Judicial Department.

(3) Officers and employees of the General Assembly.

(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.

(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.

(6) Employees of the Office of the Governor that the Governor, at any time, in the Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in the Lieutenant Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(8) Instructional and research staff, physicians, and dentists of The University of North Carolina, including the faculty of the North Carolina School of Science and Mathematics.

(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.

(9a) Employees of the North Carolina Cooperative Extension Service of North Carolina State University who are employed in county operations and who are not exempt pursuant to subdivision (8) or (9) of this subsection.

(10) Repealed by Session Laws 1991, c. 84, s. 1.

(11) Repealed by Session Laws 2006-66, s. 9.11(z), effective July 1, 2007.

(12), (13) Repealed by Session Laws 2001-474, s. 15, effective November 29, 2001.

(14) Employees of the North Carolina State Ports Authority.

(15) Employees of the North Carolina Global TransPark Authority.

(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.

(17) Repealed by Session Laws 2004-129, s. 37, effective July 1, 2004.

(18) Employees of the Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.

(19) Employees of the Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.

(20) Repealed by Session Laws 2008-134, s. 73(d), effective July 28, 2008.

(21) Employees of the Clean Water Management Trust Fund.

(22) Employees of the North Carolina Turnpike Authority.

(23) The Executive Administrator and the Deputy Executive Administrator of the State Health Plan for Teachers and State Employees.

(24) Employees of the State Health Plan for Teachers and State Employees as designated by law or by the Executive Administrator of the Plan.

(25) The North Carolina State Lottery Director and employees of the North Carolina State Lottery.

(26) The Executive Director, associate and assistant directors, and instructional staff of the North Carolina Teacher Academy.

(27) The Chief Administrative Law Judge of the Office of Administrative Hearings.

(28) The Executive Director and the Assistant Director of the U.S.S. North Carolina Battleship Commission.

(c2) The provisions of this Chapter shall not apply to:

(1) Public school superintendents, principals, teachers, and other public school employees.

(2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 41.

(3) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and employees of the Community Colleges System Office whose salaries are fixed by the State Board of Community Colleges in accordance with the provisions of G.S. 115D-3.

(c3) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions of this Chapter shall not apply to: Teaching and related educational classes of employees of the Department of Correction, the Department of Health and Human Services, and any other State department, agency or institution, whose salaries shall be set in the same manner as set for corresponding public school employees in accordance with Chapter 115C of the General Statutes.

(c4) Repealed by Session Laws 1993, c. 321, s. 145(b).

(c5) Notwithstanding any other provision of this Chapter, Article 14 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c6) Article 15 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c7) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-7, 126-14.3, and except as to the provisions of G.S. 126-14.2, G.S. 126-34.1(a)(2), and Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to exempt managerial positions.

(c8) Except as to the provisions of Articles 5, 6, 7, and 14 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Employees of the University of North Carolina Health Care System.
(2) Employees of the University of North Carolina Hospitals at Chapel Hill, as may be provided pursuant to G.S. 116-37(a)(4).
(3) Employees of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill as may be provided pursuant to G.S. 116-37(a)(4).
(4) Employees of the Medical Faculty Practice Plan, a division of the School of Medicine of East Carolina University.

(c9) Notwithstanding any other provision of this section, the provisions of Article 16 of this Chapter shall apply to all exempt and nonexempt State employees in the executive, legislative, and judicial branches unless provided otherwise by Article 16 of this Chapter. The provisions of Article 16 of this Chapter shall not apply to employees described in subdivisions (2) and (3) of subsection (a) of this section.

(c10) Notwithstanding any other provision of this section, the provisions of G.S. 126-8.5 shall apply to all exempt and nonexempt State employees in the executive, legislative, and judicial branch unless provided otherwise by G.S. 126-8.5. The provisions of G.S. 126-8.5 shall not apply to employees described in subdivisions (2) and (3) of subsection (a) of this section.

(c11) The following are exempt from: (i) the classification and compensation rules established by the State Personnel Commission pursuant to G.S. 126-4(1) through (4); (ii) G.S. 126-4(5) only as it applies to hours and days of work, vacation, and sick leave; (iii) G.S. 126-4(6) only as it applies to promotion and transfer; (iv) G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs; and (v) Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1:

(1) The Office of the Commissioner of Banks and its employees; and
(2) The following employees of the Department of Cultural Resources:
    a. Director and Associate Directors of the North Carolina Museum of History.
    b. Program Chiefs and Curators.
    c. Regional History Museum Administrators and Curators.
    d. North Carolina Symphony.
    e. Director, Associate Directors, and Curators of Tryon Palace.
    f. Director, Associate Directors, and Curators of Transportation Museum.
    g. Director and Associate Directors of the North Carolina Arts Council.
    h. Director, Assistant Directors, and Curators of the Division of State Historic Sites.

(d)(1) Exempt Positions in Cabinet Department. — The Governor may designate a total of 100 exempt policymaking positions throughout the following departments:
    a. Department of Administration;
    b. Department of Commerce;
    c. Department of Correction;
    d. Department of Crime Control and Public Safety;
    e. Department of Cultural Resources;
    f. Department of Health and Human Services;
    g. Department of Environment and Natural Resources;
    h. Department of Revenue;
    i. Department of Transportation; and
    j. Department of Juvenile Justice and Delinquency Prevention.

The Governor may designate exempt managerial positions in a number up to one percent (1%) of the total number of full-time positions in each cabinet department listed above in this sub-subdivision, not to exceed 30 positions in each department. Notwithstanding the provisions of this subdivision, or the other requirements of this subsection, the Governor may at any time increase by five the number of exempt policymaking positions at the Department of Health and Human Services, but at no time shall the total number of exempt policymaking positions exceed 105. The Governor shall notify the General Assembly and the State Personnel Director of the additional positions designated hereunder.

(2) Exempt Positions in Council of State Departments and Offices. — The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. The State Board of Education may designate exempt positions in the Department of Public Instruction. The number of exempt policymaking positions in each department headed by an elected department head listed above in this sub-subdivision shall be limited to 20 exempt policymaking positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to 20 positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater.

(2a) Designation of Additional Positions. — The Governor, elected department head, or State Board of Education may request that additional positions be designated as exempt. The request shall be made by sending a list of exempt positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the State Personnel Director. The General Assembly may authorize all, or part of, the additional positions to be designated as exempt positions. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the positions shall be designated as exempt positions. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt positions; the policymaking positions shall not be designated as exempt during the interim.

(3) Letter. — These positions shall be designated in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate by May 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.

(4) Vacancies. — In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to that person. In the event of a vacancy in the Office of Governor, the State Board of Education shall make these designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to the Governor.

(5) Creation, Transfer, or Reorganization. — The Governor, elected department head, or State Board of Education may designate as exempt a position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after May 1 of the year in which the oath of office is administered to the Governor. The designation must be made in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after such position is created, transferred, or in which reorganization has occurred.

(6) Reversal. — Subsequent to the designation of a position as an exempt position as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the Governor, by an elected department head, or by the State Board of Education in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

(7) Hearing Officers. — Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision.

(e) An exempt employee may be transferred, demoted, or separated from his or her position by the department head authorized to designate the exempt position except:

(1) When an employee who has the minimum service requirements described in G.S. 126-1.1 but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or

(2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and salary, including all across-the-board increases since placement in the position designated as exempt, as his most recent subject position.

(f) A department head is authorized to use existing budgeted positions within his department in order to carry out the provisions of subsection (e) of this section. If it is necessary to meet the requirements of subsection (e) of this section, a department head may use salary reserve funds authorized for his department.

(g) No employee shall be placed in an exempt position without 10 working days prior written notification that such position is so designated. A person applying for a position that is designated as exempt must be notified in writing at the time he makes the application that the position is designated as exempt.

(h) In case of dispute as to whether an employee is subject to the provisions of this Chapter, the dispute shall be resolved as provided in Article 3 of Chapter 150B. (1965, c. 640, s. 2; 1967, c. 24, s. 20; cc. 1038, 1143; 1969, c. 982;

1971, c. 1025, s. 2; 1973, c. 476, s. 143; 1975, c. 667, ss. 8, 9; 1977, c. 866, ss. 2-5; 1979, 2nd Sess., c. 1137, s. 40; 1983, c. 717, s. 41; c. 867, s. 2; 1985, c. 589, s. 38; c. 617, s. 1; c. 757, s. 206(c); 1985 (Reg. Sess., 1986), c. 955, s. 43; c. 1014, ss. 41, 235; c. 1022, s. 9; 1987, c. 320, s. 4; c. 395, s. 1; c. 809, s. 1; c. 850, s. 19; 1987 (Reg. Sess., 1988), c. 1064, s. 3; 1989, c. 168, s. 9; c. 236, s. 3; c. 484; c. 727, s. 218(85); c. 751, s. 7(13); 1991, c. 65, s. 2; c. 84, ss. 1, 2; c. 354, s. 3; c. 749, s. 4; 1991 (Reg. Sess., 1992), c. 879, s. 5; c. 959, s. 85; 1993, c. 145, s. 1; c. 321, s. 145(b); c. 553, ss. 39, 40; 1993 (Reg. Sess., 1994), c. 777, s. 4(g); 1995, c. 141, ss. 3, 5; c. 393, s. 1; 1995 (Reg. Sess., 1996), c. 690, s. 15; 1997-443, ss. 11A.118(a), 11A.119(a), 22.2(b); 1997-520, s. 3; 1998-212, s. 11.8(b); 1999-84, s. 21; 1999-253, s. 1; 1999-434, s. 25; 2000-137, s. 4(nn); 2000-147, s. 4; 2000-148, s. 3; 2001-92, s. 2; 2001-424, s. 32.16(a); 2001-474, s. 15; 2001-487, ss. 21(d), 30(a), (b); 2002-126, s. 28.4; 2002-133, s. 4; 2004-124, s. 31.27(b); 2004-129, s. 37; 2005-276, s. 29.34(b); 2005-344, s. 9; 2006-66, ss. 9.11(y), (z), 9.17(e), 18.2(e); 2006-204, s. 2; 2006-221, s. 20; 2006-259, s. 49; 2006-264, s. 11; 2007-117, s. 3(b); 2007-195, s. 1; 2007-323, s. 28.22A(o); 2007-345, s. 12; 2007-484, s. 9(c); 2008-134, s. 73(d).)

Effect of Amendments. —

Session Laws 2008-134, s. 73(d), effective July 28, 2008, repealed subdivision (c1)(20), which read: "Employees of the North Carolina Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes."

ARTICLE 3.

Local Discretion as to Local Government Employees.

§ 126-11. Local personnel system may be established; approval and monitoring; rules and regulations.

CASE NOTES

Substantially Equivalent Exemption. — North Carolina Office of State Personnel issued in a letter to a county a substantially equivalent exemption from the North Carolina State Personnel Act, G.S. 126-1 et seq., finding substantial equivalency for all of the county's human resource program areas as they applied to departments of social services, public health, and area mental health programs and their employees. Steward v. Green, — N.C. App. —, 657 S.E.2d 719, 2008 N.C. App. LEXIS 423 (2008).

ARTICLE 7.

The Privacy of State Employee Personnel Records.

§ 126-22. Personnel files not subject to inspection under § 132-6.

(a) Except as provided in G.S. 126-23 and G.S. 126-24, personnel files of State employees shall not be subject to inspection and examination as authorized by G.S. 132-6.

(b) For purposes of this Article the following definitions apply:
- (1) "Employee" means any current State employee, former State employee, or applicant for State employment.
- (2) "Employer" means any State department, university, division, bureau, commission, council, or other agency subject to Article 7 of this Chapter.

(3) "Personnel file" means any employment-related or personal information gathered by an employer, the Retirement Systems Division of the Department of State Treasurer, or by the Office of State Personnel. Employment-related information contained in a personnel file includes information related to an individual's application, selection, promotion, demotion, transfer, leave, salary, contract for employment, benefits, suspension, performance evaluation, disciplinary actions, and termination. Personal information contained in a personnel file includes an individual's home address, social security number, medical history, personal financial data, marital status, dependents, and beneficiaries.

(4) "Record" means the personnel information that each employer is required to maintain in accordance with G.S. 126-23.

(c) Personnel files of former State employees who have been separated from State employment for 10 or more years may be open to inspection and examination except for papers and documents relating to demotions and to disciplinary actions resulting in the dismissal of the employee and personnel files maintained by the Retirement Systems Division of the Department of State Treasurer.

(d) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former State employees to domiciled, nonprofit organizations representing 10,000 or more retired State government, local government, or public school employees. (1975, c. 257, s. 1; 1977, c. 866, s. 9; 2007-508, s. 4.5; 2008-194, s. 11(a).)

Effect of Amendments. — Session Laws 2008-194, s. 11(a), effective August 8, 2008, added subsection (d).

ARTICLE 8.

Employee Appeals of Grievances and Disciplinary Action.

§ 126-34.1. Grounds for contested case under the State Personnel Act defined.

CASE NOTES

Prima Facie Case of Discrimination Shown. — Because the Office of Administrative Hearings had jurisdiction to hear an African-American employee's contested case of racial discrimination, the employee met his prima facie burden of discrimination, the trial court applied the appropriate standard of review, and the employee presented sufficient evidence of unequal treatment of an African-American employee compared to a Caucasian employee, and established that the Hatch Act was a pretext for discrimination, a finding of discrimination was upheld. Corbett v. N.C. DMV, — N.C. App. —, 660 S.E.2d 233, 2008 N.C. App. LEXIS 897 (2008).

§ 126-35. Just cause; disciplinary actions for State employees.

CASE NOTES

Failure to Show Just Cause. — Trial court properly concluded that North Carolina Department of Environment and Natural Resources (NCDENR) employees had not engaged in unacceptable personal conduct that was detrimental to state service and that there was no just cause for discipline because a "rational nexus" did not exist between the employees' off-duty criminal conduct and the potential adverse impact on their future ability to perform for NCDENR. Kelly v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 664 S.E.2d 625, 2008 N.C. App. LEXIS 1544 (2008).

ARTICLE 14.

Protection for Reporting Improper Government Activities.

§ 126-84. Statement of policy.

CASE NOTES

Protected Activity. — Terminated employee's conduct in disclosing confidential patient information was not a protected activity under the North Carolina Whistle-blower Act, G.S. 126-84 et seq. Holt v. Albemarle Reg'l Health Servs. Bd., — N.C. App. —, 655 S.E.2d 729, 2008 N.C. App. LEXIS 95 (2008).

§ 126-85. Protection from retaliation.

(a) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the State employee's compensation, terms, conditions, location, or privileges of employment because the State employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84, unless the State employee knows or has reason to believe that the report is inaccurate.

(a1) No State employee shall retaliate against another State employee because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84.

(b) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the State employee has refused to carry out a directive which in fact constitutes a violation of State or federal law, rule or regulation or poses a substantial and specific danger to the public health and safety.

(b1) No State employee shall retaliate against another State employee because the employee has refused to carry out a directive which may constitute a violation of State or federal law, rule or regulation, or poses a substantial and specific danger to the public health and safety.

(c) The protections of this Article shall include State employees who report any activity described in G.S. 126-84 to the State Auditor as authorized by G.S. 147-64.6B or to the Program Evaluation Division as authorized by G.S. 120-36.12(10). (1989, c. 236, s. 1; 1997-520, s. 6; 2008-196, s. 2(b); 2008-215, s. 8.)

Editor's Note. — Session Laws 2008-215, s. 9, provides: "This act is effective when it becomes law and applies to all information received or collected by the State Auditor concerning alleged violations of Chapters 138A or 120C of the General Statutes or Article 14 of Chapter 120 of the General Statutes on or after January 1, 2007."

Effect of Amendments. — Session Laws 2008-196, s. 2(b), effective August 8, 2008, added "or to the Program Evaluation Division as authorized by G.S. 120-36.12(10)" at the end of subsection (c).

Session Laws 2008-215, s. 8, effective August 15, 2008, substituted "G.S. 147-64.6B" for "G.S. 147-64.6(c)(16)" in subsection (c). See Editor's note for applicability.

CASE NOTES

Retaliatory Firing Not Shown. — Employee was not wrongfully terminated by a supervisor for the employee's employer, which was a district health department, because the employee's conduct in disclosing confidential patient information, even construing the evidence in the employee's favor, was not a protected activity under the North Carolina Whistle-blower Act, G.S. 126-84 et seq.; alternatively, the employee failed to raise a factual issue as to whether the reason given for the termination of the employee's employment was merely a pretext. Holt v. Albemarle Reg'l Health Servs. Bd., — N.C. App. —, 655 S.E.2d 729, 2008 N.C. App. LEXIS 95 (2008).

§ 126-88. Notice of employee protections and obligations.

CASE NOTES

Cited in Holt v. Albemarle Reg'l Health Servs. Bd., — N.C. App. —, 655 S.E.2d 729, 2008 N.C. App. LEXIS 95 (2008).

Chapter 127A.

Militia.

Article 2.

General Administrative Officers.

Sec.
127A-19. Adjutant General.

Article 15.

North Carolina National Guard Tuition Assistance Act of 1975.

127A-192. Definitions.
127A-193. Benefit.

Sec.
127A-194. Eligibility.
127A-195. Administration and funding.

ARTICLE 2.

General Administrative Officers.

§ 127A-19. Adjutant General.

The military head of the militia shall be the Adjutant General who shall hold the rank of major general. The Adjutant General shall be appointed by the Governor in his capacity as commander in chief of the militia, in consultation with the Secretary of Crime Control and Public Safety, and shall serve at the pleasure of the Governor. No person shall be appointed as Adjutant General who has less than five years' commissioned service in an active status in any component of the armed forces of the United States. The Adjutant General, while holding such office, may be a member of the active national guard or naval militia.

Subject to the approval of the Governor and in consultation with the Secretary, Department of Crime Control and Public Safety, the Adjutant General may appoint (i) a deputy adjutant general who may hold the rank of major general, and (ii) an assistant adjutant general for Army National Guard, and an assistant adjutant general for Air National Guard, each of whom may hold the rank of brigadier general and who shall serve at the pleasure of the Governor. The Adjutant General may also employ such staff members and other personnel as may be authorized by the Secretary and funded. (1917, c. 200, s. 14; C.S., s. 6802; 1925, c. 54; 1939, c. 14; 1949, c. 1225; 1959, c. 218, s. 2; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1979, c. 481; 1995, c. 122, s. 1; 2005-314, s. 1; 2008-162, s. 3.)

Effect of Amendments. — Session Laws 2008-162, s. 3, effective August 3, 2008, in the second paragraph, in the first sentence, inserted "(i)" and substituted "who may hold the rank of major general, and (ii)" for "for Army National Guard."

ARTICLE 3.

National Guard.

§ 127A-40. Pensions for the members of the North Carolina national guard.

Editor's Note. — Session Laws 2008-181, ss. 45.1 to 45.4, established the North Carolina National Guard Pension Fund Study Commission to examine the current status of the North

Carolina National Guard Pension Fund. The act provided that the study should consider the actuarial condition and long-term solvency of the Fund, changes to minimum and maximum monthly benefits paid from the Fund, and changes in eligibility requirements. The act further provided for membership, staffing, powers and duties, expenses and vacancies of the Commission. Session Laws 2008-181, s. 45.4, provides for a final report and termination no later than March 1, 2009.

Article 15.

North Carolina National Guard Tuition Assistance Act of 1975.

§ 127A-192. Definitions.

(a) Academic Year. — Any period of 365 days beginning with the first day of enrollment for a course of instruction.

(a1) Business or Trade School. — Any school within the State of North Carolina which is licensed by the State Board of Education and listed by that Board as an approved private business school or an approved private trade school.

(b) Private Educational Institutions. — Any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within and licensed by the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of this Article.

(c) Secretary. — The Secretary of Crime Control and Public Safety or his or her designee.

(d) State Educational Institutions. — Any of the constituent institutions of the University of North Carolina, or any community college operated under the provisions of Chapter 115D of the General Statutes of North Carolina.

(e) Repealed by Session Laws 2008-94, s. 2, effective July 1, 2008.

(f) Student Loan. — A loan or loans made to eligible students or parents of students to aid in attaining an education beyond the high school level. (1975, c. 917, s. 4; 1977, c. 70, s. 2; c. 228, s. 1; 1987, c. 564, s. 24; 2008-94, s. 2.)

Editor's Note. — Subsections (a) through (e) of this section, as amended by Session Laws 2008-94, s. 2, have been redesignated as follows at the direction of the Revisor of Statutes: former subsection (a), which was changed by the act to subsection (b), has been redesignated as subsection (a1); subsections (b) through (d), which were changed by the act to subsections (c) through (e), have been left as subsections (b) through (d); and subsection (e) has been set out as repealed.

Effect of Amendments. — Session Laws 2008-94, s. 2, effective July 1, 2008, added present subsection (a); redesignated former subsections (a) through (d) as present subsections (b) through (e), respectively; deleted former subsection (e), which defined "Academic Year"; and added subsection (f).

§ 127A-193. Benefit.

The benefit provided under this Article shall consist of a monetary educational assistance grant not to exceed the highest amount charged by a State educational institution per academic year or a lesser amount, as prescribed by the Secretary, to remain within the funds appropriated, to qualifying members of the North Carolina National Guard. Benefits provided under G.S. 127A-195(g) shall be payable for a period of one year at a time, renewable at the option of the Secretary. All other benefits provided under this Article shall be payable for a period of one academic year at a time, renewable at the option of the Secretary. (1975, c. 917, s. 5; 1977, c. 228, s. 2; 1983 (Reg. Sess., 1984), c.

1034, ss. 99, 100; 1993 (Reg. Sess., 1994), c. 769, s. 22.3; 2000-67, s. 18; 2005-444, s. 1; 2008-94, s. 3.)

Effect of Amendments. — Session Laws 2008-94, s. 3, effective July 1, 2008, rewrote the second sentence, which read: "Benefits shall be payable for a period of one academic year at a time, renewable at the option of the Secretary," added the third sentence, and made a grammatical change.

§ 127A-194. Eligibility.

(a) Active members of the North Carolina National Guard who are enrolled or who shall enroll in any business or trade school, private educational institution, or State educational institution shall be eligible to apply for this tuition assistance benefit: Provided, that the applicant has a minimum obligation of two years remaining as a member of the National Guard from the end of the academic period for which tuition assistance is provided or that the applicant commit himself or herself to extended membership for at least two additional years from the end of that academic period.

(b) This tuition assistance benefit shall be applicable to students in the following categories:

(1) Students seeking to achieve completion of their secondary school education at a community college or technical institute.
(2) Students seeking trade or vocational training or education.
(3) Students seeking to achieve a two-year associate degree.
(4) Students seeking to achieve a four-year baccalaureate degree.
(5) Students seeking to achieve a graduate degree.

(c) The following persons shall be eligible to apply for disbursements to pay outstanding student loans pursuant to G.S. 127A-195(g):

(1) Persons described in subsections (a) and (b) of this section.
(2) Active members of the North Carolina National Guard who were previously enrolled in any business or trade school, private educational institution, or State educational institution, but only if:
    a. The applicant has a minimum obligation of two years remaining as a member of the National Guard from the time of the application; or
    b. The applicant commits himself or herself to extended membership for at least two additional years from the time of the application. (1975, c. 917, s. 6; 1977, c. 228, ss. 3, 4; 2008-94, s. 4.)

Effect of Amendments. — Session Laws 2008-94, s. 4, effective July 1, 2008, in subsection (a) made grammatical and punctuation changes; in subdivision (b)(1), inserted "or technical institute" at the end; and added subsection (c).

§ 127A-195. Administration and funding.

(a) The Secretary of Crime Control and Public Safety is charged with the administration of the tuition assistance program under this Article. He may delegate administrative tasks to other persons within the Department of Crime Control and Public Safety as he deems best for the orderly administration of this program.

(b) The Secretary shall determine the eligibility of applicants, select the benefit recipients, establish the effective date of the benefit, and may suspend or revoke the benefit if he finds that the recipient does not maintain an adequate academic status, or if the recipient engages in riots, unlawful demonstrations, the seizure of educational buildings, or otherwise engages in disorderly conduct, breaches of the peace, or unlawful assemblies. The Secretary shall maintain such records and shall promulgate such rules and regulations as he deems necessary for the orderly administration of this program. The Secretary may require of business or trade schools or State or private educational institutions such reports and other information as he may need to carry out the provisions of this Article and he shall disburse benefit payments for recipients upon certification of enrollment by the enrolling institutions.

(c) All tuition benefit disbursements shall be made to the business or trade school or State or private educational institution concerned, for credit to the tuition account of each recipient. Funds disbursed pursuant to subsection (g) of this section shall be made to the student loan creditor concerned to be applied against the outstanding student loans of each National Guard member beneficiary.

(d) The participation by any business or trade school or private educational institution in this program shall be subject to the applicable provisions of this Article and to examination by the State Auditor of the accounts of the benefit recipients attending or having attended such private schools or institutions. The Secretary may defer making an award or may suspend an award in any business or trade school or private educational institution which does not comply with the provisions of this Article relating to said institutions. The manner of payment to any business or trade school or private educational institution shall be as prescribed by the Secretary.

(e) Irrespective of other provisions of this Article, the Secretary may prescribe special procedures for adjusting the accounts of benefit recipients who, for reasons of illness, physical inability to attend classes or for other valid reason satisfactory to the Secretary, may withdraw from any business or trade school or State or private educational institution prior to the completion of the term, semester, quarter or other academic period being attended at the time of withdrawal.

(f) Any balance of the monetary educational assistance grant up to the maximum for the academic year remaining after tuition is paid pursuant to subsection (c) of this section may be disbursed to the recipient as reimbursement for required course books and materials. The manner of obtaining the reimbursement payment for these required books and materials shall be as prescribed by the Secretary.

(g) Any funds not needed to accomplish the other purposes of this Article may be used to help members of the North Carolina National Guard repay outstanding student loans in accordance with rules to be adopted by the Secretary. These rules shall provide that the length of a member's deployment may be considered in determining whether or not, and in what amount, a member receives assistance pursuant to this subsection. There shall be no reimbursement under this subsection for payments already made on student loans, and funds shall not be provided under this subsection for the purpose of paying student loans obtained for courses from which the member withdrew or for which the member did not receive a passing grade. Payments for outstanding loans shall not exceed the maximum benefit available under G.S. 127A-193. (1975, c. 917, s. 7; 1977, c. 70, s. 2; 2005-444, ss. 2, 3; 2008-94, s. 1.)

Effect of Amendments. — Session Laws 2008-94, s. 1, effective July 1, 2008, in subsection (c), added the second sentence, and added subsection (g).

Chapter 128.

Offices and Public Officers.

Article 1.

General Provisions.

§ 128-6. Persons admitted to office deemed to hold lawfully.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Commissioner's Appointment Void Upon Appointment of Successor. — Panel of commissioners was evenly split and no majority existed because when the opinion and award was filed, a commissioner who concurred in the opinion was not an officer de jure pursuant as the commissioner's term had ended and a successor had been appointed. Therefore, because the commissioner's appointment was void before the opinion and award were entered, and because the commissioner's concurrence in the opinion and award was not the act of a qualified officer — neither de jure nor de facto — the concurrence was a nullity. Baxter v. Danny Nicholson, Inc., — N.C. App. —, 661 S.E.2d 892, 2008 N.C. App. LEXIS 1149 (June 17, 2008).

§ 128-7. Officer to hold until successor qualified.

CASE NOTES

Holding Over After Expiration of Term. —

Panel of commissioners was evenly split and no majority existed because when the opinion and award was filed, a commissioner who concurred in the opinion was not an officer de jure pursuant as the commissioner's term had ended and a successor had been appointed. Therefore, because the commissioner's appointment was void before the opinion and award were entered, and because the commissioner's concurrence in the opinion and award was not the act of a qualified officer — neither de jure nor de facto — the concurrence was a nullity. Baxter v. Danny Nicholson, Inc., — N.C. App. —, 661 S.E.2d 892, 2008 N.C. App. LEXIS 1149 (June 17, 2008).

Article 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.

Local Modification. — Catawba: 1995, c. 306, s. 1; 1995 (Reg. Sess., 1996), c. 693, s. 2; Mecklenburg: 1995, c. 532, s. 1; 1995 (Reg. Sess., 1996), c. 693, s. 1; city of Asheville: 1981, c. 737; city of Charlotte: 1947, c. 926, amended by Session Laws 1949, c. 734; 1951, c. 387; 1965, c. 575; 1969, c. 132; 1971, c. 860; c. 903, s. 2; 1973, c. 267; 1983, c. 506; (as to Art. 3) 1985, c. 185; 1987, c. 506; 1987 (Reg. Sess., 1988), c. 1033; 1989, c. 248; c. 770, s. 45; 1991 (Reg. Sess., 1992), c. 830; c. 1030, s. 51.6; 1993 (Reg. Sess., 1994), c. 640, s.1; 1995, c. 171, s. 1; 1999-100, s. 1; 2001-22, 2002-43, ss. 1-5; 2006-117, s. 1, 2; (as to Article 3) city of Fayetteville: 1998-61; city of High Point: 1987, c. 327; town of Stovall: 2008-52, s. 1 (as to prior service credits).

Chapter 130A.

Public Health.

Article 1.

Definitions, General Provisions and Remedies.

Part 1. General Provisions.

Sec.
130A-16. (Effective January 1, 2010) Collection and reporting of race and ethnicity data.

Article 5.

Maternal and Child Health and Women's Health.

Part 1. In General.

130A-125. Screening of newborns for metabolic and other hereditary and congenital disorders.

Article 8.

Sanitation.

Part 9. Milk Sanitation.

130A-279. Sale or dispensing of milk.

Article 9.

Solid Waste Management.

Part 2A. Nonhazardous Solid Waste Management.

130A-309.06. Additional powers and duties of the Department.
130A-309.09A. Local government solid waste responsibilities.
130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited.

Part 2E. Discarded Computer Equipment and Television Management.

130A-309.90. (Effective January 1, 2010) Findings.
130A-309.91. (Effective January 1, 2010) Definitions.
130A-309.92. (Effective January 1, 2010) Responsibility for recycling discarded computer equipment and televisions.
130A-309.93. (For effective dates, see note) Requirements for computer manufacturers.
130A-309.93A. (For effective dates, see note) Requirements for television manufacturers.
130A-309.93B. (Effective January 1, 2010) Requirements applicable to retailers.
130A-309.94. Requirements for discarded computer equipment and television collectors.
130A-309.95. (For effective dates, see notes) Responsibilities of the Department.
130A-309.96. (Effective January 1, 2010) Computer Equipment Management Account; Television Management Account.
130A-309.97. (Effective January 1, 2010) Enforcement.
130A-309.98. (Effective January 15, 2011) Annual report.
130A-309.99. Local government authority not preempted.

Part 2F. Management of Abandoned Manufactured Homes

(Effective July 1, 2009; Expires October 1, 2023.)

130A-309.111. (Effective July 1, 2009, and expiring October 1, 2023) Purpose.
130A-309.112. (Effective July 1, 2009, and expiring October 1, 2023) Definitions.
130A-309.113. (Effective July 1, 2009, and expiring October 1, 2023) Management of abandoned manufactured homes.
130A-309.114. (Effective July 1, 2009, and expiring October 1, 2023) Process for the disposal of abandoned manufactured homes.
130A-309.115. (Effective July 1, 2009, and expiring October 1, 2023) Grants to local governments.
130A-309.116. (Effective July 1, 2009, and expiring October 1, 2023) Authority to adopt ordinances.
130A-309.117. (Effective July 1, 2009, and expiring October 1, 2023) Reporting on the management of abandoned manufactured homes.
130A-309.118. (Effective July 1, 2009, and expiring October 1, 2023) Effect on local ordinances.

Part 3. Inactive Hazardous Sites.

130A-310.2. Inactive Hazardous Waste Sites Priority List.

Article 10.

North Carolina Drinking Water Act.

Sec.
130A-315. Drinking water rules; exceptions; limitation on implied warranties.
130A-329. Reporting.

Article 11.

Wastewater Systems.

130A-335. Wastewater collection, treatment and disposal; rules.

Article 16.

Postmortem Investigation and Disposition.

Part 1. Postmortem Medicolegal Examinations and Services.

130A-383. Medical examiner jurisdiction.
130A-391. [Repealed.]

Part 3A. Revised Uniform Anatomical Gift Act.

130A-412.14. Search and notification.
130A-412.31. Giving of blood by persons 16 years of age or more.

Part 5. Disposition of Unclaimed Bodies.

Sec.
130A-415. Unclaimed bodies; bodies claimed by the Lifeguardianship Council of the Association for Retarded Citizens of North Carolina; disposition.

Part 7. Disposition of Body or Body Parts.

130A-420. Authority to dispose of body or body parts.

Article 19.

Asbestos Hazard Management.

130A-450. Asbestos containing material removal permit fees.

Article 23.

Smoking in Public Places.

Part 1. Smoking in State Government Buildings.

130A-491. (Effective January 1, 2009) Legislative intent.
130A-492. (Effective January 1, 2009) Definitions.
130A-493. (Effective January 1, 2009) Smoking in State government buildings and State vehicles prohibited.
130A-498. (Effective until January 1, 2009) Local governments may restrict smoking in public places.
130A-498. (Effective January 1, 2009) Local governments may restrict smoking in public places.

ARTICLE 1.

Definitions, General Provisions and Remedies.

Part 1. General Provisions.

§ 130A-1. Title.

CASE NOTES

Cited in Murray v. County of Person, — N.C. App. —, 664 S.E.2d 58, 2008 N.C. App. LEXIS 1497 (Aug. 5, 2008).

§ 130A-1.1. Mission and essential services.

Task Force on Preventing Childhood Obesity. — Session Laws 2008-107, s. 10.17(cc), as amended by Session Laws 2008-118, s. 1.5(b), provides: "The sum of one hundred thousand dollars ($100,000) appropriated in this section in the Maternal and Child Health Block Grant to the Department of Health and Humans Services, Division of Public Health, for the 2008-2009 fiscal year shall be used to establish a Task Force on Preventing Childhood Obesity (Task Force) to be cochaired by the State Health Director and the Chairman of the State Board of Education. The Task Force is to review current State activities in the Department of Health and Human Services, the Department of Public Instruction, and the

Health and Wellness Trust Fund and develop a comprehensive statewide strategic plan with recommendations for preventing childhood obesity. The goals of the strategic plan shall encompass the following framework of initiatives:

"(1) Providing healthier foods to students;

"(2) Improving the availability of healthy foods at home and in the community;

"(3) Increasing the frequency, intensity, and duration of physical activity in schools;

"(4) Encouraging communities to establish a master plan for pedestrian and bicycle pathways;

"(5) Improving access to safe places where children can play; and

"(6) Developing activities or programs that limit children's screen time, including limits on video games and television.

"Membership on the task force shall include, but is not limited to, representatives from the following organizations:

"(1) Health and Wellness Trust Fund.

"(2) North Carolina Institute for Public Health.

"(3) UNC Active Living by Design.

"(4) Blue Cross Blue Shield of North Carolina.

"(5) NC Hospital Association.

"(6) NC Parent Teacher Association.

"(7) American Heart Association.

"(8) School Nutrition Association of North Carolina.

"(9) Association of Local Health Directors.

"The Chairman of the State Board of Education and the State Health Director shall report to the House of Representatives Chairs of the Appropriations Subcommittees on Health and Human Services and Education, the Senate Chairs of the Appropriations Committees on Health and Human Services and Education/Public Instruction, the Joint Legislative Oversight Committee on Education, the Joint Legislative Oversight Committee on Health, and the Fiscal Research Division on the Task Force on Preventing Childhood Obesity's strategic plan and recommendations by January 15, 2009, or upon the convening of the 2009 Session of the General Assembly, whichever occurs first."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 130A-3. Appointment of the State Health Director.

Cross References. — As to policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events, see G.S. 115D-20.1(c).

§ 130A-5. Duties of the Secretary.

Cross References. — As to policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events, see G.S. 115D-20.1(c).

§ 130A-16. (Effective January 1, 2010) Collection and reporting of race and ethnicity data.

All medical care providers required by the provisions of this Chapter to report to the Division of Public Health shall collect and document patient self-reported race and ethnicity data and shall include such data in their reports to the Division. (2008-119, s. 1.)

Editor's Note. — Session Laws 2008-119, s. 3, made this section effective January 1, 2010.

Part 2. Remedies.

§ 130A-24. Appeals procedure.

CASE NOTES

Cited in Kitchin v. Halifax County, — N.C. App. —, 665 S.E.2d 760, 2008 N.C. App. LEXIS 1624 (2008).

Article 2.

Local Administration.

Part 1. Local Health Departments.

§ 130A-36. Creation of district health department.

CASE NOTES

Applied in Holt v. Albemarle Reg'l Health Servs. Bd., — N.C. App. —, 655 S.E.2d 729, 2008 N.C. App. LEXIS 95 (2008).

Part 1B. Public Health Authorities Authorized.

§ 130A-45.4. Appointment of a public health authority director.

CASE NOTES

Applied in Kitchin v. Halifax County, — N.C. App. —, 665 S.E.2d 760, 2008 N.C. App. LEXIS 1624 (2008).

Part 2. Sanitary Districts.

§ 130A-47. Creation by Commission.

Editor's Note. —
Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

§ 130A-50. Election and terms of office of sanitary district boards.

Editor's Note. —
Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-187, s. 33(a), to eliminate any confusion as to the effective dates of the act. See Effect of Amendment note for the effective date of the amendment to this section by Session Laws 2007-391, s. 15.

Effect of Amendments. — Session Laws 2007-391, s. 15, effective August 19, 2007, in subsection (a), deleted "county" preceding "board or boards of county," and added the second through fourth sentences.

ARTICLE 5.

Maternal and Child Health and Women's Health.

Part 1. In General.

§ 130A-125. Screening of newborns for metabolic and other hereditary and congenital disorders.

(a) The Department shall establish and administer a Newborn Screening Program. The program shall include, but shall not be limited to:

(1) Development and distribution of educational materials regarding the availability and benefits of newborn screening.
(2) Provision of laboratory testing.
(3) Development of follow-up protocols to assure early treatment for identified children, and the provision of genetic counseling and support services for the families of identified children.
(4) Provision of necessary dietary treatment products or medications for identified children as medically indicated and when not otherwise available.
(5) For each newborn, provision of physiological screening in each ear for the presence of permanent hearing loss.

(b) The Commission shall adopt rules necessary to implement the Newborn Screening Program. The rules shall include, but shall not be limited to, the conditions for which screening shall be required, provided that screening shall not be required when the parents or the guardian of the infant object to such screening. If the parents or guardian object to the screening, the objection shall be presented in writing to the physician or other person responsible for administering the test, who shall place the written objection in the infant's medical record.

(b1) The Commission for Public Health shall adopt temporary and permanent rules to include newborn hearing screening in the Newborn Screening Program established under this section.

(c) A fee of nineteen dollars ($19.00) applies to a laboratory test performed by the State Laboratory of Public Health pursuant to this section. The fee for a laboratory test is a departmental receipt of the Department and shall be used to offset the cost of the Newborn Screening Program. (1991, c. 661, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 6; 1998-131, s. 13; 2000-67, s. 11.31(a); 2005-276, s. 41.1(a); 2007-182, s. 2; 2008-107, s. 29.4(a).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 29.4(a), effective July 20, 2008, rewrote subsection (c).

ARTICLE 6.

Communicable Diseases.

Part 6. Rabies.

§ 130A-192. Dogs and cats not wearing required rabies vaccination tags.

CASE NOTES

Applied in Kitchin v. Halifax County, — N.C. App. —, 665 S.E.2d 760, 2008 N.C. App. LEXIS 1624 (2008).

§ 130A-195. Destroying stray dogs and cats in quarantine districts.

CASE NOTES

Applied in Kitchin v. Halifax County, — N.C. App. —, 665 S.E.2d 760, 2008 N.C. App. LEXIS 1624 (2008).

ARTICLE 8.

Sanitation.

Part 9. Milk Sanitation.

§ 130A-279. Sale or dispensing of milk.

Only milk that is Grade "A" pasteurized milk may be sold or dispensed directly to consumers for human consumption. Raw milk and raw milk products shall be sold or dispensed only to a permitted milk hauler or to a processing facility at which the processing of milk is permitted, graded, or regulated by a local, State, or federal agency. The Commission may adopt rules to provide exceptions for dispensing raw milk and raw milk products for nonhuman consumption. Any raw milk or raw milk product dispensed as animal feed shall include on its label the statement "NOT FOR HUMAN CONSUMPTION" in letters at least one-half inch in height. Any raw milk or raw milk product dispensed as animal feed shall also include on its label the statement "IT IS NOT LEGAL TO SELL RAW MILK FOR HUMAN CONSUMPTION IN NORTH CAROLINA." "Sale" or "sold" shall mean any transaction that involves the transfer or dispensing of milk and milk products or the right to acquire milk and milk products through barter or contractual arrangement or in exchange for any other form of compensation including, but not limited to, the sale of shares or interest in a cow, goat, or other lactating animal or herd. (1983, c. 891, s. 2; 2004-195, s. 6.2; 2008-88, s. 2.)

Editor's Note. — Session Laws 2008-88, s. 1, provides: "Pursuant to G.S. 150B-21.3(b1), 02 NCAC 09E.0116 (Unpasteurized Milk), as adopted by the North Carolina Board of Agriculture on September 7, 2007, and approved by the Rules Review Commission on October 18, 2007, is disapproved."

Effect of Amendments. — Session Laws 2008-88, s. 2, effective July 11, 2008, added the fourth and fifth sentences.

Article 9.

Solid Waste Management.

Part 2A. Nonhazardous Solid Waste Management.

§ 130A-309.06. Additional powers and duties of the Department.

(a) In addition to other powers and duties set forth in this Part, the Department shall:

(1) Develop a comprehensive solid waste management plan consistent with this Part. The plan shall be developed in consultation with units of local government and shall be updated at least every three years. In developing the State solid waste management plan, the Department shall hold public hearings around the State and shall give notice of these public hearings to all units of local government and regional planning agencies.

(2) Provide guidance for the orderly collection, transportation, storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the State.

(3) Encourage coordinated local activity for solid waste management within a common geographical area.

(4) Provide planning, technical, and financial assistance to units of local government and State agencies for reduction, recycling, reuse, and processing of solid waste and for safe and environmentally sound solid waste management and disposal.

(5) Cooperate with appropriate federal agencies, local governments, and private organizations in carrying out the provisions of this Part.

(6) Promote and assist the development of solid waste reduction, recycling, and resource recovery programs that preserve and enhance the quality of the air, water, and other natural resources of the State.

(7) Maintain a directory of recycling and resource recovery systems in the State and provide assistance with matching recovered materials with markets.

(8) Manage a program of grants for programs for recycling and special waste management, and for programs that provide for the safe and proper management of solid waste.

(9) Provide for the education of the general public and the training of solid waste management professionals to reduce the production of solid waste, to ensure proper processing and disposal of solid waste, and to encourage recycling and solid waste reduction.

(10) Develop descriptive literature to inform units of local government of their solid waste management responsibilities and opportunities.

(11) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 10.

(12) Provide and maintain recycling bins for the collection and recycling of newspaper, aluminum cans, glass containers, and recyclable plastic beverage containers at the North Carolina Zoological Park.

(13) Identify, based on reports required under G.S. 130A-309.14 and any other relevant information, those materials in the municipal solid waste stream that are marketable in the State or any portion thereof

and that should be recovered from the waste stream prior to treatment or disposal.

(14) Identify and analyze, with assistance from the Department of Commerce pursuant to G.S. 130A-309.14, components of the State's recycling industry and present and potential markets for recyclable materials in this State, other states, and foreign countries.

(b) Repealed by Session Laws 2007-550, s. 6(b), effective August 1, 2007, and applicable to any application for a permit for a solid waste management facility that is pending on that date.

(c) The Department shall report to the Environmental Review Commission on or before 15 January of each year on the status of solid waste management efforts in the State. The report shall include:

(1) A comprehensive analysis, to be updated in each report, of solid waste generation and disposal in the State projected for the 20-year period beginning on 1 July 1991.

(2) The total amounts of solid waste recycled and disposed of and the methods of solid waste recycling and disposal used during the calendar year prior to the year in which the report is published.

(3) An evaluation of the development and implementation of local solid waste management programs and county and municipal recycling programs.

(4) An evaluation of the success of each county or group of counties in meeting the municipal solid waste reduction goal established in G.S. 130A-309.04.

(5) Recommendations concerning existing and potential programs for solid waste reduction and recycling that would be appropriate for units of local government and State agencies to implement to meet the requirements of this Part.

(6) An evaluation of the recycling industry, the markets for recycled materials, the recycling of polystyrene, and the success of State, local, and private industry efforts to enhance the markets for these materials.

(7) Recommendations to the Governor and the Environmental Review Commission to improve the management and recycling of solid waste in the State, including any proposed legislation to implement the recommendations.

(8) A description of the condition of the Solid Waste Management Trust Fund and the use of all funds allocated from the Solid Waste Management Trust Fund, as required by G.S. 130A-309.12(c).

(9) A description of the review and revision of bid procedures and the purchase and use of reusable, refillable, repairable, more durable, and less toxic supplies and products by both the Department of Administration and the Department of Transportation, as required by G.S. 130A-309.14(a1)(3).

(10) A description of the implementation of the North Carolina Scrap Tire Disposal Act that includes the beginning and ending balances in the Scrap Tire Disposal Account for the reporting period, the amount credited to the Scrap Tire Disposal Account during the reporting period, and the amount of revenue used for grants and to clean up nuisance tire collection sites, as required by G.S. 130A-309.63(e).

(11) A description of the management of white goods in the State, as required by G.S. 130A-309.85.

(12) A summary of the report by the Department of Transportation on the amounts and types of recycled materials that were specified or used in contracts that were entered into by the Department of Transportation during the previous fiscal year, as required by G.S. 136-28.8(g).

(13) A summary of the reports by each State department, institution, agency, community college, and local school administrative unit authorized to purchase materials and supplies detailing the amounts and types of materials and supplies with recycled content that were purchased during the previous fiscal year and the progress toward reaching the goals under G.S. 143-58.3, as required by G.S. 143-58.2(f).

(14) **(Effective July 1, 2009, and expiring October 1, 2023)** A description of the activities related to the management of abandoned manufactured homes in the State in accordance with G.S. 130A-117, the beginning and ending balances in the Solid Waste Management Trust Fund for the reporting period and the amount of funds used, itemized by county, for grants made under Part 2F of Article 9 of Chapter 130A of the General Statutes.

(d) Repealed by Session Laws 2001-452, s. 3.1, effective October 28, 2001. (1989, c. 784, s. 2; 1991, c. 336, s. 4; c. 621, ss. 3, 4; 1993, c. 250, s. 3; 1995 (Reg. Sess., 1996), c. 594, s. 10; 2001-452, s. 3.1; 2007-550, s. 6(b); 2008-136, s. 2.)

Effect of Amendments. — Session Laws 2008-136, s. 2, effective July 1, 2009, and expiring October 1, 2023, added subdivision (c)(14).

§ 130A-309.09A. Local government solid waste responsibilities.

(a) The governing board of each unit of local government shall assess local solid waste collection services and disposal capacity and shall determine the adequacy of collection services and disposal capacity to meet local needs and to protect human health and the environment. Each unit of local government shall implement programs and take other actions that it determines are necessary to address deficiencies in service or capacity required to meet local needs and to protect human health and the environment. A unit of local government may adopt ordinances governing the disposal, in facilities that it operates, of solid waste generated outside of the area designated to be served by the facility. Such ordinances shall not be construed to apply to privately operated disposal facilities located within the boundaries of the unit of local government.

(b) Each unit of local government, either individually or in cooperation with other units of local government, shall develop a 10-year comprehensive solid waste management plan. Units of local government shall make a good-faith effort to achieve the State's forty percent (40%) municipal solid waste reduction goal and to comply with the State's comprehensive solid waste management plan. Each unit of local government shall develop its solid waste management plan with public participation, including, at a minimum, one advertised public meeting. The Department shall assist units of local government in the preparation of the plan required by this subsection if the unit of local government requests assistance. Each plan shall be updated at least every three years. In order to assure compliance with this subsection, each unit of local government shall provide the Department with a copy of its current plan upon request by the Department. Each plan shall:

(1) Evaluate the solid waste stream in the geographic area covered by the plan.

(2) Include a goal for the reduction of municipal solid waste on a per capita basis by 30 June 2001 and a goal for the further reduction of municipal solid waste by 30 June 2006. The solid waste reduction goals shall be determined by the unit or units of local government that prepare the plan, and shall be determined so as to assist the State, to

the maximum extent practical, to achieve the State's forty percent (40%) municipal solid waste reduction goal as set out in G.S. 130A-309.04(c).

(3) Be designed to achieve the solid waste reduction goals established by the plan.

(4) Include a description of the process by which the plan was developed, including provisions for public participation in the development of the plan.

(5) Include an assessment of current programs and a description of intended actions with respect to the following solid waste management methods:
  a. Reduction at the source.
  b. Collection.
  c. Recycling and reuse.
  d. Composting and mulching.
  e. Incineration with energy recovery.
  f. Incineration without energy recovery.
  g. Transfer outside the geographic area covered by the plan.
  h. Disposal.

(6) Include an assessment of current programs and a description of intended actions with respect to:
  a. Education with the community and through the schools.
  b. Management of special wastes.
  c. Prevention of illegal disposal and management of litter.
  d. Purchase of recycled materials and products manufactured with recycled materials.
  e. **(Effective January 1, 2010)** For each county and each municipality with a population in excess of 25,000, collection of discarded computer equipment and televisions, as defined in G.S. 130A-309.91.

(7) Include a description and assessment of the full cost of solid waste management, including the costs of collection, disposal, waste reduction, and other programs, and of the methods of financing those costs.

(8) Consider the use of facilities and other resources for management of solid waste that may be available through private enterprise.

(9) **(Effective July 1, 2009, and expiring October 1, 2023)** Include as a component a written plan for the management of abandoned manufactured homes as required under G.S. 130A-309.113(a).

(c) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 12.

(d) In order to assess the progress in meeting the goal set out in G.S. 130A-309.04, each unit of local government shall report to the Department on the solid waste management programs and waste reduction activities within the unit of local government by 1 September of each year. At a minimum, the report shall include:

(1) A description of public education programs on recycling.

(2) The amount of solid waste received at municipal solid waste management facilities, by type of solid waste.

(3) The amount and type of materials from the solid waste stream that were recycled.

(4) The percentage of the population participating in various types of recycling activities instituted.

(5) The annual reduction in municipal solid waste, measured as provided in G.S. 130A-309.04.

(6) Information regarding programs and other actions implemented as part of the local comprehensive solid waste management plan.

(7) A statement of the costs of solid waste management programs implemented by the unit of local government and the methods of financing those costs.

(e) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 13.

(f) Each operator of a municipal solid waste management facility shall weigh all solid waste when it is received.

(g) A unit of local government that is a collector of municipal solid waste shall not knowingly collect for disposal, and the owner or operator of a municipal solid waste management facility that is owned or operated by a unit of local government shall not knowingly dispose of, any type or form of municipal solid waste that is generated within the boundaries of a unit of local government that by ordinance:

(1) Prohibits generators or collectors of municipal solid waste from disposing of that type or form of municipal solid waste.

(2) Requires generators or collectors of municipal solid waste to recycle that type or form of municipal solid waste. (1989, c. 784, s. 2; 1989 (Reg. Sess., 1990), c. 1009, s. 4; 1991, c. 621, s. 7; 1995 (Reg. Sess., 1996), c. 594, s. 13; 2007-550, s. 16.2; 2008-136, s. 3; 2008-198, s. 11.4; 2008-208, ss. 2, 3, 7.)

Editor's Note. —

Session Laws 2008-208, s. 7, as amended by Session Laws 2008-198, s. 11.4, provides that the amendment by Session Laws 2007-550, s. 16.2, which added subdivision (b)(6)e, is effective January 1, 2010.

Effect of Amendments. —

Session Laws 2008-136, s. 3, effective July 1, 2009 and expiring October 1, 2023, added subdivision (b)(9).

Session Laws 2008-208, s. 2, effective August 9, 2008, inserted "and televisions" in subdivision (b)(6)e.

§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited.

(a) No beverage shall be sold or offered for sale within the State in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab.

(b) No person shall distribute, sell, or offer for sale in this State, any product packaged in a container or packing material manufactured with fully halogenated chlorofluorocarbons (CFC). Producers of containers or packing material manufactured with chlorofluorocarbons (CFC) are urged to introduce alternative packaging materials that are environmentally compatible.

(c)(1) No plastic bag shall be provided at any retail outlet to any retail customer to use for the purpose of carrying items purchased by that customer unless the bag is composed of material that is recyclable.

(2) It is the goal of the State that at least twenty-five percent (25%) of the plastic bags provided at retail outlets in the State to retail customers for carrying items purchased by the customer be recycled.

(d)(1) No person shall distribute, sell, or offer for sale in this State any polystyrene foam product that is to be used in conjunction with food for human consumption unless the product is composed of material that is recyclable.

(2) Repealed by Session Laws 1995, c. 321, s. 1.

(e) No person shall distribute, sell, or offer for sale in this State any rigid plastic container, including a plastic beverage container unless the container has a molded label indicating the plastic resin used to produce the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangulated arrows. The three arrows shall form an equilateral triangle with the common point of each line forming each angle of the triangle at the midpoint of each arrow and rounded with a short radius.

The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The label shall appear on or near the bottom of the container and be clearly visible. A container having a capacity of less than eight fluid ounces or more than five gallons is exempt from the requirements of this subsection. The numbers and letters shall be as follows:

(1) For polyethylene terephthalate, the letters "PETE" and the number 1.
(2) For high density polyethylene, the letters "HDPE" and the number 2.
(3) For vinyl, the letter "V" and the number 3.
(4) For low density polyethylene, the letters "LDPE" and the number 4.
(5) For polypropylene, the letters "PP" and the number 5.
(6) For polystyrene, the letters "PS" and the number 6.
(7) For any other, the letters "OTHER" and the number 7.

(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.
(2) Used oil.
(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
(4) White goods.
(5) Antifreeze (ethylene glycol).
(6) Aluminum cans.
(7) **(Effective until October 1, 2009)** Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition of the disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
(7) **(Effective October 1, 2009)** Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
(8) Lead-acid batteries, as provided in G.S. 130A-309.70.
(9) Beverage containers that are required to be recycled under G.S. 18B-1006.1.
(10) **(Effective October 1, 2009)** Motor vehicle oil filters.
(11) **(Effective October 1, 2009)** Recyclable rigid plastic containers that are required to be labeled as provided in subsection (e) of this section, that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. The prohibition on disposal of recyclable rigid plastic containers in landfills does not apply to rigid plastic containers that are intended for use in the sale or distribution of motor oil.
(12) **(Effective October 1, 2009)** Wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris.
(13) Oyster shells.
(14) **(Effective January 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.91.
(15) **(Effective January 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.91.

(f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:

(1) Antifreeze (ethylene glycol) used solely in motor vehicles.
(2) Aluminum cans.
(3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
(4) White goods.
(5) Lead-acid batteries, as provided in G.S. 130A-309.70.
(6) Beverage containers that are required to be recycled under G.S. 18B-1006.1.
(7) **(Effective January 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.91.
(8) **(Effective January 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.91.

(f2) Subsection (f1) of this section shall not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste. Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.

(h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill shall not be construed as a violation of subsection (f) of this section.

(i) The accidental or occasional disposal of small amounts of prohibited solid waste by incineration shall not be construed as a violation of subsection (f1) of this section if the Department has approved a plan for the incinerator as provided in subsection (j) of this section or if the incinerator is exempt from subsection (j) of this section.

(j) The Department may issue a permit pursuant to this Article for an incinerator that is subject to subsection (f1) of this section only if the applicant for the permit has a plan approved by the Department pursuant to this subsection. The applicant shall file the plan at the time of the application for the permit. The Department shall approve a plan only if it complies with the requirements of this subsection. The plan shall provide for the implementation of a program to prevent the incineration of the solid waste listed in subsection (f1) of this section. The program shall include the random visual inspection prior to incineration of at least ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the retention of the records of the random visual inspections and the training of personnel to recognize the solid waste listed in subsection (f1) of this section. If a random visual inspection discovers solid waste that may not be incinerated pursuant to subsection (f1) of this section, the program shall provide that the operator of the incinerator shall dispose of the solid waste in accordance with applicable federal and State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes only of medical waste.

(k) **(Effective October 1, 2009)** A county or city may petition the Department for a waiver from the prohibition on disposal of a material described in subdivisions (9), (10), (11) and (12) of subsection (f) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship.

(*l*) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding subdivision (12) of subsection (f) of this section, the oyster shells may be disposed of in the landfill. (1989, c. 784, s. 2; 1991, c. 23, s. 1; c. 375, s. 1; 1991 (Reg. Sess., 1992), c. 932, ss. 1, 2; 1993, c. 290, s. 1; 1995, c. 321, s. 1; c. 504, s. 9; 1995 (Reg. Sess., 1996), c. 594, s. 17; 2001-440, ss. 3.1, 3.2; 2005-348, s. 3; 2005-362, ss. 2, 3; 2006-226, s. 24(a); 2006-264, ss. 98.5(a), (c); 2007-550, ss. 16.3, 16.4; 2008-198, s. 11.4; 2008-208, ss. 3, 4, 7.)

Subdivision (f)(7) Set Out Twice. — The first version of subdivision (f)(7) set out above is effective until October 1, 2009. The second version of subdivision (f)(7) set out above is effective October 1, 2009.

Editor's Note. —

Session Laws 2007-550, s. 16.6(b), as amended by Session Laws 2008-208, s. 7, and as amended by Session Laws 2008-198, s. 11.4, provides that the amendment by Session Laws 2007-550, ss. 16.3 and 16.4, which added subdivisions (f)(14) and (f1)(7), is effective January 1, 2011.

Effect of Amendments. —

Session Laws 2008-208, ss. 3 and 4, effective January 1, 2011, added subdivisions (f)(15) and (f1)(8).

§ 130A-309.12. Solid Waste Management Trust Fund.

Editor's Note. —

Session Laws 2008-136, s. 4, effective July 1, 2009, and expiring October 1, 2023, provides: "The Department of Environment and Natural Resources shall annually use up to one million dollars ($1,000,000) from the Solid Waste Management Trust Fund established by G.S. 130A-309.12 in order to fund the cleanup of abandoned mobile homes as provided in G.S. 130A-309.115."

Session Laws 2008-136, s. 5, effective July 1, 2009, and expiring October 1, 2023, provides: "A county designated as a development tier one or two area pursuant to G.S. 143B-437.08 may, upon resolution by the Board of Commissioners of their intent to (i) develop a plan for the management of abandoned manufactured homes and (ii) implement the plan once developed, request a planning grant of up to two thousand five hundred dollars ($2,500) from the Solid Waste Management Trust Fund. These funds shall be used by the county to prepare a plan as provided in G.S. 130A-309.113, as enacted by Section 1 of this act [codified as G.S. 130A-309.111 through 130A-309.118, and to identify abandoned manufactured homes."

Part 2E. Discarded Computer Equipment and Television Management.

§ 130A-309.90. (Effective January 1, 2010) Findings.

The General Assembly finds that:

(1) The computer equipment and television waste stream is growing rapidly in volume and complexity and can introduce toxic materials into solid waste landfills.

(2) It is in the best interests of the citizens of this State to have convenient, simple, and free or low-cost access to recycling services for discarded computer equipment and televisions.

(3) Collection programs operated by manufacturers, and local government and nonprofit agencies are an efficient way to divert discarded computer equipment and televisions from disposal and to provide recycling services to all citizens of this State.

(4) The development of local and nonprofit collection programs is hindered by the high costs of recycling and transporting discarded computer equipment and televisions.

(5) No comprehensive system currently exists, either provided by electronics manufacturers, retailers, or others, to adequately serve all citizens of the State and to divert large quantities of discarded computer equipment and televisions from disposal.

(6) Manufacturer responsibility is an effective way to ensure that manufacturers of computer equipment take part in a solution to the electronic waste problem.

(7) The recycling of certain discarded computer equipment and televisions recovers valuable materials for reuse and will create jobs and expand the tax base of the State.

(8) While some computers and computer monitors can be refurbished and reused and other consumer electronics products contain valuable

materials, some older and bulkier consumer electronic products, including some televisions, may not contain any valuable products but should nevertheless be recycled to prevent the release of toxic substances to the environment.

(9) For the products covered by this Part, differences in product life expectancy, market economics, residual value, and product portability necessitate different approaches to recycling.

(10) In order to ensure that end-of-life computer equipment and televisions are responsibly recycled, to promote conservation, and to protect public health and the environment, a comprehensive and convenient system for recycling and reuse of certain electronic equipment should be established on the basis of shared responsibility among manufacturers, retailers, consumers, and the State. (2007-550, s. 16.1(a); 2008-198, s. 11.4; 2008-208, ss. 1, 7.)

Editor's Note. —

Session Laws 2007-550, s. 16.6(a), as amended by Session Laws 2008-208, s. 7, and as amended by Session Laws 2008-198, 11.4, makes this section effective January 1, 2010.

Effect of Amendments. — Session Laws 2008-208, s. 1, effective August 9, 2008, in the introductory language, substituted "finds that" for "makes the following findings"; in subdivision (1), inserted "and television"; in subdivision (2), inserted "or low-cost" and "and televisions"; in subdivision (3), inserted "manufacturers, and" and "and televisions"; in subdivision (4), added "and televisions"; in subdivision (5), substituted "no comprehensive system" for "no other system," inserted "and televisions"; in subdivision (7), inserted "certain" and "and televisions"; and added subdivisions (8) through (10).

§ 130A-309.91. (Effective January 1, 2010) Definitions.

As used in this Part, the following definitions apply:

(1) Business entity. — Defined in G.S. 55-1-40(2a).

(2) Computer equipment. — Any desktop central processing unit, any laptop computer, the monitor or video display unit for a computer system, and the keyboard, mice, and other peripheral equipment. Computer equipment does not include a printing device such as a printer, a scanner, a combination print-scanner-fax machine, or other device designed to produce hard paper copies from a computer; an automobile; a television; a household appliance; a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display, or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or other medical devices as that term is defined under the federal Food, Drug, and Cosmetic Act.

(2a) Computer manufacturer. — A person that manufactures computer equipment sold under its own brand or label; sells under its own brand or label computer equipment produced by other suppliers; imports into the United States computer equipment that was manufactured outside of the United States; or owns a brand that it licenses to another person for use on computer equipment. Manufacturer includes a business entity that acquires another business entity that manufactures or has manufactured computer equipment.

(2b) Covered device. — Computer equipment and televisions. The term does not include a device that is:

a. Part of a motor vehicle or any component of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

b. (i) Physically a part of or integrated within a larger piece of equipment designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting; (ii) equipment used for diagnostic, monitoring, or other medical products as that term is defined under the Federal Food, Drug, and Cosmetic Act; (iii) equipment used for security, sensing, monitoring, antiterrorism purposes, or emergency services purposes.

c. Contained within a household appliance, including, but not limited to, a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, air purifier, or exercise equipment.

(3) Discarded computer equipment. — Computer equipment that is solid waste.

(3a) Discarded television. — A television that is solid waste.

(4) Discarded computer equipment or television collector. — A municipal or county government, nonprofit agency, or retailer that accepts discarded computer equipment or a television from the public.

(5) Recodified as G.S. 130A-309.91(2a).

(5a) Market share. — A television manufacturer's obligation to recycle discarded televisions. A television manufacturer's market share is the television manufacturer's prior year's sales of televisions as calculated by the Department pursuant to G.S. 130A-309.95(4) divided by all manufacturers' prior year's sales for all televisions as calculated by the Department pursuant to G.S. 130A-309.95(4). Market share may be expressed as a percentage, a fraction, or a decimal fraction.

(6) Orphan discarded computer equipment. — Any discarded computer equipment for which a manufacturer cannot be identified or for which the manufacturer is no longer in business and has no successor in interest.

(7) Retailer. — A person that sells computer equipment or televisions in the State to a consumer. Retailer includes a manufacturer of computer equipment or televisions that sells directly to a consumer through any means, including transactions conducted through sales outlets, catalogs, the Internet, or any similar electronic means, but does not include a person that sells computer equipment or televisions to a distributor or retailer through a wholesale transaction.

(8) Television. — Any electronic device that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying of television or video programming via broadcast, cable, or satellite, including, without limitation, any direct view or projection television with a viewable screen of 9 inches or larger whose display technology is based on cathode ray tube (CRT), plasma, liquid crystal (LCD), digital light processing (DLP), liquid crystal on silicon (LCOS), silicon crystal reflective display (SXRD), light emitting diode (LED), or similar technology marketed and intended for use by a consumer primarily for personal purposes. The term does not include computer equipment.

(9) Television manufacturer. — A person that: (i) manufactures for sale in this State a television under a brand that it licenses or owns; (ii) manufactures for sale in this State a television without affixing a brand; (iii) resells into this State a television under a brand it owns or licenses produced by other suppliers, including retail establishments that sell a television under a brand that the retailer owns or licenses; (iv) imports into the United States or exports from the United States a television for sale in this State; (v) sells at retail a television acquired from an importer that is the manufacturer as described in

sub-subdivision (iv) of this subdivision, and the retailer elects to register in lieu of the importer as the manufacturer of those products; (vi) manufactures a television for or supplies a television to any person within a distribution network that includes wholesalers or retailers in this State and that benefits from the sale in this State of the television through the distribution network; or (vii) assumes the responsibilities and obligations of a television manufacturer under this Part. In the event the television manufacturer is one that manufactures, sells, or resells under a brand it licenses, the licensor or brand owner of the brand shall not be considered to be a television manufacturer under (i) or (iii) of this subdivision. (2007-550, s. 16.1(a); 2008-198, ss. 11.3, 11.4; 2008-208, ss. 1, 7.)

Editor's Note. — Session Laws 2007-550. s. 16.6(a), as amended by Session Laws 2008-208, s. 7, and as amended by Session Laws 2008-198, s. 11.4, makes this section effective January 1, 2010.

Subdivision (5), as amended by Session Laws 2008-208, s. 1, was redesignated as present subdivision (2a), former subdivision (2a), as enacted by Session Laws 2008-208, s. 1, was redesignated as subdivision (2b), and subdivision (5) has been set out as recodified at the direction of the Revisor of Statutes.

Session Laws 2007-550, s. 16.1(b), as amended by Session Laws 2008-208, s. 6, provides: "The Department shall include in the annual report for 15 January 2011, as required by G.S. 130A-309.98, as enacted by Section 16.1(a) of this act, an analysis of the feasibility and advisability of adding additional products to the list of covered devices in the definition of computer equipment as set out in G.S. 130A-309.91, as enacted by Section 16.1(a) of this act."

Effect of Amendments. — Session Laws 2008-198, s. 11.3, effective August 8, 2008, substituted "sub-subdivision (iv)" for "(i)" near the middle of the first sentence of subdivision (9).

Session Laws 2008-208, s. 1, effective August 9, 2008, added subdivisions (2a) and (3a); in subdivision (4), inserted "or television" and "or a television"; in subdivision (5), substituted "computer manufacturer" for "manufacturer," substituted "that manufactures" for "who manufactures"; added subdivision (5a); in subdivision (7), substituted "person that sells" for "person who sells" twice, inserted "or televisions" three times; and added subdivisions (8) and (9).

§ 130A-309.92. (Effective January 1, 2010) Responsibility for recycling discarded computer equipment and televisions.

In addition to the specific requirements of this Part, discarded computer equipment and television collectors and manufacturers share responsibility for the recycling of discarded computer equipment and televisions and the education of citizens of the State as to recycling opportunities for discarded computer equipment and televisions. (2007-550, s. 16.1(a); 2008-198, s. 11.4; 2008-208, ss. 1, 7.)

Editor's Note. — Session Laws 2007-550. s. 16.6(a), as amended by Session Laws 2008-208, s. 7, and as amended by Session Laws 2008-198, s. 11.4, makes this section effective January 1, 2010.

Effect of Amendments. — Session Laws 2008-208, s. 1, effective August 9, 2008, inserted "and televisions" throughout.

§ 130A-309.93. (For effective dates, see note) Requirements for computer manufacturers.

(a) Registration and Fee Required. — Each manufacturer of computer equipment, before selling or offering for sale computer equipment in North Carolina, shall register with the Department and, at the time of registration, shall pay an initial registration fee of ten thousand dollars ($10,000) to the

Department. A computer equipment manufacturer that has registered shall pay an annual renewal registration fee of one thousand dollars ($1,000) to the Department. The annual renewal registration fee shall be paid each year no later than the first day of the month in which the initial registration fee was paid. The proceeds of these fees shall be credited to the Computer Equipment Management Account. A manufacturer of computer equipment that sells 1,000 items of computer equipment or less per year is exempt from the requirement to pay the registration fee and the annual renewal fee imposed by this subsection.

(b) Manufacturer Label Required. — A manufacturer shall not sell or offer to sell computer equipment in this State unless a visible, permanent label clearly identifying the manufacturer of that device is affixed to the equipment.

(c) Computer Equipment Recycling Plan. — Each manufacturer of computer equipment shall develop and submit to the Department a plan for reuse or recycling of discarded computer equipment in the State produced by the manufacturer. The manufacturer shall submit a proposed plan to the Department within 120 days of registration as required by subsection (a) of this section. The plan shall:

(1) Describe any direct take-back program to be implemented by the manufacturer, including mail-back programs and collection events.

(2) Provide that the manufacturer will take responsibility for discarded computer equipment it manufactured.

(3) Include a detailed description as to how the manufacturer will implement and finance the plan.

(4) Provide for environmentally sound management practices to transport and recycle discarded computer equipment.

(5) Describe the performance measures that will be used by the manufacturer to document recovery and recycling rates for discarded computer equipment. The calculation of recycling rates shall include the amount of discarded computer equipment managed under the manufacturer's program divided by the amount of computer equipment sold by the manufacturer in North Carolina.

(6) Describe in detail how the manufacturer will provide for transportation of discarded computer equipment at no cost from discarded computer equipment collectors.

(7) Describe in detail how the manufacturer will fully cover the costs of processing discarded computer equipment received from discarded computer equipment collectors.

(8) Include a public education plan on the laws governing the recycling and reuse of discarded computer equipment under this Part and on the methods available to consumers to comply with those requirements.

(d) Computer Equipment Recycling Plan Revision. — A manufacturer may prepare a revised plan and submit it to the Department at any time as the manufacturer considers appropriate in response to changed circumstances or needs. The Department may require a manufacturer to revise or update a plan if the Department finds that the plan is inadequate or out-of-date.

(e) Payment of Costs for Plan Implementation. — Each manufacturer is responsible for all costs associated with the development and implementation of its plan. A manufacturer shall not collect a charge for the management of discarded computer equipment at the time the equipment is discarded.

(f) Joint Computer Equipment Recycling Plans. — A manufacturer may fulfill the requirements of this section by participation in a joint recycling plan with other manufacturers. A joint plan shall meet the requirements of subsection (c) of this section.

(g) Annual Report. — Each manufacturer shall submit a report to the Department by 1 February of each year that includes all of the following for the previous calendar year:

(1) A description of the collection and recycling services used to recover the manufacturer's products.

(2) The quantity and type of computer equipment sold by the manufacturer to retail consumers in this State.

(3) The quantity and type of discarded computer equipment collected by the manufacturer for recovery in this State for the preceding calendar year.

(4) Any other information requested by the Department. (2007-550, s. 16.1(a); 2008-198, s. 11.4; 2008-208, ss. 1, 7.)

Editor's Note. — Session Laws 2007-550. s. 16.6(a), as amended by Session Laws 2008-208, s. 7, and as amended by Session Laws 2008-198, s. 11.4, makes subsections (a)-(f) effective January 1, 2010, and subsection (g) effective February 1, 2011.

Effect of Amendments. — Session Laws 2008-208, s. 1, effective August 9, 2008, inserted "computer" in the section heading.

§ 130A-309.93A. (For effective dates, see note) Requirements for television manufacturers.

(a) Each television manufacturer, before selling or offering for sale televisions in the State, shall register with the Department and, at the time of registration, shall pay an initial registration fee of two thousand five hundred dollars ($2,500) to the Department. An initial registration shall be valid from the day of registration through the last day of the fiscal year in which the registration fee was paid. A television manufacturer that has registered shall pay an annual renewal registration fee of two thousand five hundred dollars ($2,500) to the Department. The annual renewal registration fee shall be paid to the Department each fiscal year no later than 30 June of the previous fiscal year. The Department may charge an administrative fee of up to one hundred fifty dollars ($150.00) for failure to pay the permit fee by 30 June of each year. The proceeds of these fees shall be credited to the Television Management Account. A television manufacturer that sells 1,000 televisions or less per year is exempt from the requirement to pay the registration fee and the annual renewal fee imposed by this subsection.

(b) A television manufacturer shall not sell or offer to sell any television in this State unless a visible, permanent label clearly identifying the manufacturer of that device is affixed to the equipment.

(c) The obligation to recycle televisions shall be allocated to each television manufacturer based on the television manufacturer's market share. A television manufacturer must annually recycle or arrange for the recycling of its market share of televisions pursuant to this section.

(d) A television manufacturer shall conduct and document due diligence assessments of the recyclers the manufacturer contracts with, including an assessment of compliance with environmentally sound recovery standards adopted by the Department.

(e) A television manufacturer shall provide the Department with contact information for the manufacturer's designated agent or employee whom the Department may contact for information related to the manufacturer's compliance with the requirements of this section.

(f) A television manufacturer may fulfill the requirements of this section either individually or in participation with other television manufacturers.

(g) A television manufacturer shall report to the Department by 1 October of each year the total weight of televisions the manufacturer collected and recycled in the State during the previous year. (2008-198, s. 11.4; 2008-208, ss. 1, 7.)

Editor's Note. — Session Laws 2007-550, s. 16.6(a), as amended by Session Laws 2008-208, s. 7, and as amended by Session Laws 2008-198, s. 11.4, makes subsections (a)-(f) effective January 1, 2010, and subsection (g) effective October 1, 2011.

§ 130A-309.93B. (Effective January 1, 2010) Requirements applicable to retailers.

(a) A manufacturer must not sell or offer for sale or deliver to retailers for subsequent sale new televisions unless: (i) the covered device is labeled with the manufacturer's brand, which label is permanently affixed and readily visible; and (ii) the manufacturer has filed a registration with the Department, as specified in this Part.

(b) A retailer that sells or offers for sale new televisions must, before the initial offer for sale, review the Department's Web site to determine that all new covered devices that the retailer is offering for sale are labeled with the manufacturer's brands that are registered with the Department.

(c) A retailer is not responsible for an unlawful sale under this section if the manufacturer's registration expired or was revoked and the retailer took possession of the covered device prior to the expiration or revocation of the manufacturer's registration and the unlawful sale occurred within six months after the expiration or revocation. (2008-198, s. 11.4; 2008-208, ss. 1, 7.)

Editor's Note. — Session Laws 2007-550. s. 16.6(a), as amended by Session Laws 2008-208, s. 7, and as amended by Session Laws 2008-198, s. 11.4, makes this section effective January 1, 2010.

§ 130A-309.94. Requirements for discarded computer equipment and television collectors.

Each discarded computer equipment and television collector shall ensure that discarded computer equipment and televisions received by the collector are properly stored, and either held for pickup by a manufacturer or delivered to a facility designated by a manufacturer. (2007-550, s. 16.1(a); 2008-208, s. 1.)

Effect of Amendments. — Session Laws 2008-208, s. 1, effective August 9, 2008, inserted "and television" each place it appears and substituted "the collector are" for "the collector is consolidated at central location."

§ 130A-309.95. (For effective dates, see notes) Responsibilities of the Department.

In addition to its other responsibilities under this Part, the Department shall:

(1) Develop and maintain a current list of manufacturers that are in compliance with the requirements of G.S. 130A-309.93 and G.S. 130A-309.93A and provide the current list to the Office of Information Technology Services each time that the list is updated.

(2) Develop and implement a public education program on the laws governing the recycling and reuse of discarded televisions and computer equipment under this Part and on the methods available to consumers to comply with those requirements. The Department shall make this information available on the Internet and shall provide technical assistance to manufacturers to meet the requirements of G.S. 130A-309.93(c)(8) and G.S. 130A-309.93A(c)(8). The Department shall also provide technical assistance to units of local government on

the establishment and operation of discarded computer equipment and television collection centers and in the development and implementation of local public education programs.

(3) Maintain the confidentiality of any information that is required to be submitted by a manufacturer under this Part that is designated as a trade secret, as defined in G.S. 66-152(3) and that is designated as confidential or as a trade secret under G.S. 132-1.2.

(4) The Department shall use national televisions sales data available from commercially available analytical sources to calculate the generation of discarded televisions and to determine each television manufacturer's recovery responsibilities for televisions based on the manufacturer's market share. The Department shall extrapolate data for the State from national data on the basis of the State's share of the national population. (2007-550, s. 16.1(a); 2008-198, s. 11.4; 2008-208, ss. 1, 7.)

Editor's Note. — Session Laws 2007-550, s. 16.6(a), as amended by Session Laws 2008-208, s. 7, and as amended by Session Laws 2008-198, s. 11.4, makes subdivisions (1)-(3) effective January 1, 2010.

Effect of Amendments. — Session Laws 2008-208, s. 1, effective August 9, 2008, in subdivision (1), inserted "and G.S. 130A-309.93A"; in subdivision (2), inserted "televisions and," "and G.S. 130A-309.93A(c)(8)," and "and televisions"; and added subdivision (4).

§ 130A-309.96. (Effective January 1, 2010) Computer Equipment Management Account; Television Management Account.

(a) The Computer Equipment Management Account is created as a nonreverting account within the Department. Funds in the Account shall be used by the Department to implement the provisions of this Part.

(b) The Television Management Account is created as a nonreverting account within the Department. Funds in the Account shall be used by the Department to implement the provisions of this Part. (2007-550, s. 16.1(a); 2008-198, s. 11.4; 2008-208, ss. 1, 7.)

Editor's Note. — Session Laws 2007-550. s. 16.6(a), as amended by Session Laws 2008-208, s. 7, and as amended by Session Laws 2008-198, s. 11.4, makes this section effective January 1, 2010.

Effect of Amendments. — Session Laws 2008-208, s. 1, effective August 9, 2008, in the section heading, added "Television Management Account"; designated the previous existing provisions as subsection (a); and added subsection (b).

§ 130A-309.97. (Effective January 1, 2010) Enforcement.

This Part may be enforced as provided by Part 2 of Article 1 of this Chapter. (2007-550, s. 16.1; 2008-198, s. 11.4; 2008-208, ss. 1, 7.)

Editor's Note. — Session Laws 2007-550, s. 16.6(a), as amended by Session Laws 2008-208, s. 7, and as amended by Session Laws 2008-198, s. 11.4, makes this section effective January 1, 2010.

§ 130A-309.98. (Effective January 15, 2011) Annual report.

No later than 15 January of each year, the Department shall submit a report on the recycling of discarded computer equipment and televisions in the State under this Part to the Environmental Review Commission. The report must include an evaluation of the recycling rates in the State for discarded computer equipment and televisions, a discussion of compliance and enforcement related to the requirements of this Part, and any recommendations for any changes to the system of collection and recycling of discarded computer equipment televisions, or other electronic devices. (2007-550, s. 16.1; 2008-198, s. 11.4; 2008-208, ss. 1, 7.)

Editor's Note. — Session Laws 2007-550. s. 16.6(a), as amended by Session Laws 2008-208, s. 7, and as amended by Session Laws 2008-198, s. 11.4, makes this section effective January 15, 2011.

Session Laws 2007-550, s. 16.1(b), as amended by Session Laws 2008-208, s. 6, provides: "The Department shall include in the annual report for 15 January 2011, as required by G.S. 130A-309.98, as enacted by Section 16.1(a) of this act, an analysis of the feasibility and advisability of adding additional products to the list of covered devices in the definition of computer equipment as set out in G.S. 130A-309.91, as enacted by Section 16.1(a) of this act."

Effect of Amendments. — Session Laws 2008-208, s. 1, effective August 9, 2008, in the first sentence, substituted "15 January" for "1 April" and inserted "and televisions"; and in the last sentence, inserted "and televisions" and "televisions".

§ 130A-309.99. Local government authority not preempted.

Nothing in this Part shall be construed as limiting the authority of any local government to manage computer equipment and televisions that are solid waste. (2008-208, s. 1.)

Editor's Note. — Session Laws 2008-208, s. 8, made this section effective August 9, 2008.

Part 2F. Management of Abandoned Manufactured Homes.

§ 130A-309.111. (Effective July 1, 2009, and expiring October 1, 2023) Purpose.

The purpose of this Part is to provide units of local government with the authority, funding, and guidance needed to provide for the efficient and proper identification, deconstruction, recycling, and disposal of abandoned manufactured homes in this State. (2008-136, s. 1.)

Editor's Note. — Session Laws 2008-136, s. 1, enacted this Part as G.S. 130A-309.99A through 130A-209.99H. It has been renumbered as G.S 130A-309.111 through 130A-309.118 at the direction of the Revisor of Statutes.

Session Laws 2008-136, s. 6, makes this Part effective July 1, 2009, and expiring October 1, 2023.

§ 130A-309.112. (Effective July 1, 2009, and expiring October 1, 2023) Definitions.

The following definitions apply to this Part:

(1) "Abandoned manufactured home" means a manufactured home or mobile classroom that is both:
  a. Vacant or in need of extensive repair.
  b. An unreasonable danger to public health, safety, welfare, or the environment.

(2) "Intact" when used in connection with "abandoned manufactured home" means an abandoned manufactured home from which the

wheels and axles, white goods, and recyclable materials have not been removed.

(3) "Manufactured home" is defined in G.S. 105-164.3.

(4) "Responsible party" means any person or entity that possesses an ownership interest in an abandoned manufactured home. (2008-136, s. 1.)

Editor's Note. — For expiration of this section, see the Editor's note under G.S. 130A-309.111.

§ 130A-309.113. (Effective July 1, 2009, and expiring October 1, 2023) Management of abandoned manufactured homes.

(a) Plan. — Each county shall consider whether to implement a program for the management of abandoned manufactured homes. If, after consideration, the county decides not to implement a program, the county must state in the comprehensive solid waste management plan that it is required to develop under G.S. 130A-309.09A(b) that the county considered whether to implement a program for the management of abandoned manufactured homes and decided not to do so. A county may, at any time, reconsider its decision not to implement a program for the management of abandoned manufactured homes. If the county decides to implement a program, the county shall develop a written plan for the management of abandoned manufactured homes and include the plan as a component of the comprehensive solid waste management plan it is required to develop under G.S. 130A-309.09A(b). At a minimum, the plan shall include:

(1) A method by which the county proposes to identify abandoned manufactured homes in the county, including, without limitation, a process by which manufactured home owners or other responsible parties may request designation of their home as an abandoned manufactured home.

(2) A plan for the deconstruction of these abandoned manufactured homes.

(3) A plan for the removal of the deconstructed components, including mercury switches from thermostats, for reuse or recycling, as appropriate.

(4) A plan for the proper disposal of abandoned manufactured homes that are not deconstructed under subdivision (2) of this subsection.

(b) Authority to Contract. — A county may contract with another unit of local government or a private entity in accordance with Article 15 of Chapter 153A of the General Statutes to provide for the management of abandoned manufactured homes within the county and the implementation of its plan under subsection (a) of this section.

(c) Fee Authority. — A unit of local government or a party that contracted with the county under subsection (b) of this section may charge a disposal fee for the disposal of any abandoned manufactured home at a landfill pursuant to this Part.

(d) An intact abandoned manufactured home shall not be disposed of in a landfill. (2008-136, s. 1.)

Editor's Note. — For expiration of this section, see the Editor's note under G.S. 130A-309.111.

Session Laws 2008-136, s. 5, effective July 1, 2009, and expiring October 1, 2023, provides: "A county designated as a development tier one or two area pursuant to G.S. 143B-437.08 may, upon resolution by the Board of Commissioners of their intent to (i) develop a plan for the management of abandoned manufactured homes and (ii) implement the plan once developed, request a planning grant of up to two thousand five hundred dollars ($2,500) from the Solid Waste Management Trust Fund. These funds shall be used by the county to prepare a plan as provided in G.S. 130A-309.113, as enacted by Section 1 of this act [codified as G.S. 130A-309.111 through 130A-309.118], and to identify abandoned manufactured homes."

§ 130A-309.114. (Effective July 1, 2009, and expiring October 1, 2023) Process for the disposal of abandoned manufactured homes.

(a) If a county adopts and implements a plan for the management of abandoned manufactured homes pursuant to this Part, the county shall notify the responsible party and the owner of the property on whose land the abandoned manufactured home is located for each identified abandoned manufactured home in the county that the abandoned manufactured home must be properly disposed of by the responsible party within 90 days. The notice shall be in writing and shall be served on the person as provided by Rule 4(j) of the Rules of Civil Procedure, G.S. 1A-1. The notice shall disclose the basis for the action and advise that a hearing will be held before a designated public officer at a place within the county in which the manufactured home is located not less than 10 days nor more than 30 days after the serving of the notice; that the responsible party shall be given the right to file an answer to the order and to appear in person, or otherwise, and give testimony at the place and time fixed in the notice; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(b) If, after notice and hearing, the public officer determines that the manufactured home under consideration is abandoned, the officer shall state in writing the officer's findings of fact in support of that determination, and the county shall order the responsible party to dispose of the abandoned manufactured home within 90 days of the expiration of this period. If the responsible party fails to comply with this order, the county shall take any action it deems reasonably necessary to dispose of the abandoned manufactured home, including entering the property where the abandoned manufactured home is located and arranging to have the abandoned manufactured home deconstructed and disposed of in a manner consistent with the plan developed under G.S. 130A-309.113(a). If the responsible party is not the owner of the property on which the abandoned manufactured home is located, the county may order the property owner to permit entry onto the owner's property by an appropriate party to permit the removal and proper disposal of the abandoned manufactured home.

(c) When a county removes, deconstructs, and disposes of an abandoned manufactured home pursuant to this section, whether directly or through a party that contracted with the county, the responsible party shall be liable for the actual costs incurred by the county, directly or indirectly, for its abatement activities and its administrative and legal expenses incurred, less the amount of grants for reimbursement received by the county under G.S. 130A-309.115 for the disposal activities for that manufactured home. The county may initiate a civil action to recover these unpaid costs from the responsible party. Nonpayment of any portion of the actual costs incurred by the county shall result in the imposition of a lien on any real property in the county owned by the responsible party.

(d) This section does not apply to any of the following:

(1) A retail business premises where manufactured homes are sold.

(2) A solid waste disposal facility where no more than 10 manufactured homes are stored at one time if all of the manufactured homes

received for storage are deconstructed or removed from the facility within one year after receipt.

(e) This section does not change the existing authority of a county or a municipality to enforce any existing laws or of any person to abate a nuisance. (2008-136, s. 1.)

Editor's Note. — For expiration of this section, see the Editor's note under G.S. 130A-309.111.

§ 130A-309.115. (Effective July 1, 2009, and expiring October 1, 2023) Grants to local governments.

(a) The Department shall use funds from the Solid Waste Trust Fund established by G.S. 130A-309.12 to:

(1) Provide grants to counties to reimburse their expenses for activities under this Part.

(2) Provide technical assistance and support to counties to achieve the purposes of this Part.

(3) Implement this Part, including costs associated with staffing, training, submitting reports, and fulfilling program goals.

(b) Each county that requests a reimbursement grant from the Department shall also submit to the Department a proposed budget specifying in detail the expenses it expects to incur in a specified time period in connection with the activities under this Part. The Department shall review each submitted budget and make modifications, if necessary, in light of the availability of funds, the county's capacity to effectively and efficiently manage the abatement of abandoned manufactured homes, and any other factors that the Department reasonably determines are relevant. When the Department and a county agree on the amount of the county's budget under this subsection, the Department and the county shall execute an agreement that reflects this amount and that specifies the time period covered by the agreement, and the Department shall reserve funds for the county in the amount necessary to reimburse allowable costs. The amount of a reimbursement grant shall be calculated in accordance with subsections (c) and (d) of this section. A county shall not receive a reimbursement grant unless it has filed all the annual reports it is required to submit under G.S. 130A-309.117.

(c) Reimbursement grants shall be made in accordance with the terms of the grant agreement developed pursuant to subsection (b) of this section, but in any event, all reimbursements shall be calculated on a per-unit basis and based on the actual cost of such activities, not to exceed one thousand dollars ($1,000) for each unit. For a county designated as a development tier one or two area pursuant to G.S. 143B-437.08 where the costs associated with the disposition of an abandoned manufactured home in a manner consistent with this Part exceed one thousand dollars ($1,000) per unit, a county may request a supplemental grant in an amount equal to fifty percent (50%) of the amount in excess of one thousand dollars ($1,000). The Department shall consider the efficiency and effectiveness of the county program in making the supplemental grant, and the county participation must be a cash match.

(d) A county shall use reimbursement grant funds only for operating expenses that are directly related to the management of abandoned manufactured homes. If an operating expense is partially related to the management of abandoned manufactured homes, a county may use the reimbursement grant funds to finance the percentage of the cost that equals the percentage of the expense that is directly related to the management of abandoned manufactured homes. (2008-136, s. 1.)

Editor's Note. — For expiration of this section, see the Editor's note under G.S. 130A-309.111.

Session Laws 2008-136, s. 4, effective July 1, 2009, and expiring October 1, 2023, provides: "The Department of Environment and Natural Resources shall annually use up to one million dollars ($1,000,000) from the Solid Waste Management Trust Fund established by G.S. 130A-309.12 in order to fund the cleanup of abandoned mobile homes as provided in G.S. 130A-309.115."

§ 130A-309.116. (Effective July 1, 2009, and expiring October 1, 2023) Authority to adopt ordinances.

A county, or a unit of local government that is delegated authority to do so by the county, may adopt ordinances it deems necessary in order to implement this Part. (2008-136, s. 1.)

Editor's Note. — For expiration of this section, see the Editor's note under G.S. 130A-309.111.

§ 130A-309.117. (Effective July 1, 2009, and expiring October 1, 2023) Reporting on the management of abandoned manufactured homes.

(a) On or before 1 August of each year, any county that receives a reimbursement grant under G.S. 130A-309.115 shall submit a report to the Department that includes all of the following information:

(1) The number of units and approximate tonnage of abandoned manufactured homes removed, deconstructed, recycled, and disposed of during the previous fiscal year.
(2) A detailed statement of the county's abandoned manufactured homes account receipts and disbursements during the previous fiscal year that sets out the source of all receipts and the purpose of all disbursements.
(3) The obligated and unobligated balances in the county's abandoned manufactured homes account at the end of the fiscal year.
(4) An assessment of the county's progress in removing, deconstructing, recycling, and disposing of abandoned manufactured homes consistent with this Part.

(b) The Department shall include in its annual report to the Environmental Review Commission under G.S. 130A-309.06(c) a description of the management of abandoned manufactured homes in the State for the fiscal year ending the preceding 30 June. The description of the management of abandoned manufactured homes shall include all of the following information:

(1) The cost to each county of managing its abandoned manufactured home program during the reporting period.
(2) The beginning and ending balances of the Solid Waste Management Trust Fund for the reporting period and a list of grants made from the Fund for the period, itemized by county.
(3) A summary of the information contained in the reports submitted by counties pursuant to subsection (a) of this section.
(4) Any other information the Department considers helpful in understanding the problem of managing abandoned manufactured homes in the State. (2008-136, s. 1.)

Editor's Note. — For expiration of this section, see the Editor's note under G.S. 130A-309.111.

§ 130A-309.118. (Effective July 1, 2009, and expiring October 1, 2023) Effect on local ordinances.

This Part shall not be construed to limit the authority of counties under Article 18 of Chapter 153A of the General Statutes or the authority of cities under Article 19 of Chapter 160A of the General Statutes. (2008-136, s. 1.)

Editor's Note. — For expiration of this section, see the Editor's note under G.S. 130A-309.111.

Part 3. Inactive Hazardous Sites.

§ 130A-310.2. Inactive Hazardous Waste Sites Priority List.

(a) No later than six months after July 1, 1987, the Commission shall develop a system for the prioritization of inactive hazardous substance or waste disposal sites based on the extent to which such sites endanger the public health and the environment. The Secretary shall apply the prioritization system to the inventory of sites to create and maintain an Inactive Hazardous Waste Site Priority List, which shall rank all inactive hazardous substance or waste disposal sites in decreasing order of danger. This list shall identify the location of each site and the type and amount of hazardous substances or waste known or believed to be located on the site. The first such list shall be published within two years after July 1, 1987, with subsequent lists to be published at intervals of not more than two years thereafter. The Secretary shall notify owners, operators, and responsible parties of sites listed on the Inactive Hazardous Waste Sites Priority List of their ranking on the list. The Inactive Hazardous Sites Priority List shall be used by the Department in determining budget requests and in allocating any State appropriation which may be made for remedial action, but shall not be used so as to impede any other action by the Department, or any remedial or other action for which funds are available.

(b) No later than January 1 of each year, the Department shall report to each member of the General Assembly who has an inactive hazardous substance or waste disposal site in the member's district. This report shall include the location of each inactive hazardous substance or waste disposal site in the member's district, the type and amount of hazardous substances or waste known or believed to be located on each of these sites, the last action taken at each of these sites, and the date of that last action. (1987, c. 574, s. 2; 2008-107, s. 12.1A(a).)

Editor's Note. — Session Laws 2008-107, s. 12.1A(b), provides: "The initial report under G.S. 130A-310.2(b), as amended by this section, shall be due no later than January 1, 2009."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 12.1A(a), effective July 1, 2008, designated the previous existing provisions as subsection (a); and added subsection (b).

Article 10.

North Carolina Drinking Water Act.

§ 130A-311. Short title.

Editor's Note. — Session Laws 2008-198, s. 9, provides: "For purposes of this section, 'contamination of drinking water' means any exceedance of the drinking water standards adopted by the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act or by the drinking water standards adopted by the Commission for Health Services pursuant to Article 10 of Chapter 130A of the General Statutes. It is the intent of the General Assembly that the Department of Environment and Natural Resources aggressively compel persons who are responsible for contamination of groundwater that results in contamination of drinking water to assess and remediate the groundwater contamination as required by law."

§ 130A-315. Drinking water rules; exceptions; limitation on implied warranties.

(a) The Commission shall adopt and the Secretary shall enforce drinking water rules to regulate public water systems. The rules may distinguish between community water systems and noncommunity water systems.

(b) The rules shall:

(1) Specify contaminants which may have an adverse effect on the public health;

(2) Specify for each contaminant either:

a. A maximum contaminant level which is acceptable in water for human consumption, if it is feasible to establish the level of the contaminant in water in public water systems; or

b. One or more treatment techniques which lead to a reduction in the level of contaminants sufficient to protect the public health, if it is not feasible to establish the level of the contaminants in water in a public water system; and

(3) Establish criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels and treatment techniques as determined in paragraph (2) of this subsection. These rules may provide for:

a. The minimum quality of raw water which may be taken into a public water system;

b. A program of laboratory certification;

c. Monitoring and analysis;

d. Record-keeping and reporting;

e. Notice of noncompliance, failure to perform monitoring, variances and exemptions;

f. Inspection of public water systems; inspection of records required to be kept; and the taking of samples;

g. Criteria for design and construction of new or modified public water systems;

h. Review and approval of design and construction of new or modified public water systems;

i. Siting of new public water system facilities;

j. Variances and exemptions from the drinking water rules; and

k. Additional criteria and procedures as may be required to carry out the purpose of this Article.

(b1) The rules may also establish criteria and procedures to insure an adequate supply of drinking water. The rules may:

(1) Provide for record keeping and reporting.
(2) Provide for inspection of public water systems and required records.
(3) Establish criteria for the design and construction of new public water systems and for the modification of existing public water systems.
(4) Establish procedures for review and approval of the design and construction of new public water systems and for the modification of existing public water systems.
(4a) Limit the number of service connections to a public water system based on the quantity of water available to the public water system, provided that the number of service connections shall not be limited for a public water system operating in accordance with a local water supply plan that meets the requirements of G.S. 143-355(*l*).
(5) Establish criteria and procedures for siting new public water systems.
(6) Provide for variances and exemptions from the rules.
(7) Provide for notice of noncompliance in accordance with G.S. 130A-324.

(b2) Two or more water systems that are adjacent, that are owned or operated by the same supplier of water, that individually serve less than 15 service connections or less than 25 persons but that in combination serve 15 or more service connections or 25 or more persons, and that individually are not public water systems shall meet the standards applicable to public water systems for the following contaminants: coliform bacteria, nitrates, nitrites, lead, copper, and other inorganic chemicals for which testing and monitoring is required for public water systems on 1 July 1994. The standards applicable to these contaminants shall be enforced by the Commission as though the water systems to which this subsection applies were public water systems.

(b3) The Department shall not certify or renew a certification of a laboratory under rules adopted pursuant to subdivision (3)b. of subsection (b) of this section unless the laboratory offers to perform composite testing of samples taken from a single public water supply system for those contaminants that the laboratory is seeking certification or renewal of certification to the extent allowed by regulations adopted by the United States Environmental Protection Agency.

(c) The drinking water rules may be amended as necessary in accordance with required federal regulations.

(d) When a person that receives water from a public water system is authorized by the Utilities Commission, pursuant to G.S. 62-110(g), to charge for the costs of providing water or sewer service, that person shall not be subject to regulation under this Article solely as a result of submetering and billing for water service. The supplying water system shall perform the same level of monitoring, analysis, and record keeping that the supplying system would perform if the providing water system had not been authorized to charge for the costs of providing water or sewer service pursuant to G.S. 62-110(g).

(e) When a public water system supplies water through a master meter to a water system not regulated by this Article, the supplying water system is not responsible for operation, maintenance, or repair of the providing water system. The supplying water system shall not be responsible for contamination that is confined to the providing water system if the supplying water system meets applicable requirements for water quality, treatment, and system operation for that contaminant. The supplying water system may monitor the water within the providing water system for contamination pursuant to rules adopted under this Article. The supplying water system and the Department shall have access to the providing water system to investigate water quality problems and to determine whether any contamination is confined to the providing water system and whether the quality of the water supplied by the supplying water system is contributing contamination to the providing water system.

(f) If water in the providing water system exceeds the maximum contaminant levels established pursuant to this Article and the Department determines that the supplying water system is not responsible, the supplying water system must notify the providing water system owner in writing within one day of determining that the contamination is confined solely to the providing water system for bacteria, nitrate, and nitrite, and within 30 days for all other contaminants.

(g) A supplier of water regulated under this Article shall not be deemed to provide any warranty under Article 2 of Chapter 25 of the General Statutes, including an implied warranty of merchantability or an implied warranty of fitness for a particular purpose. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1985, c. 417, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 826, s. 1; 1993 (Reg. Sess., 1994), c. 776, s. 15; 1995, c. 25, s. 1; 2000-172, s. 1.1; 2001-502, s. 6; 2004-143, s. 8; 2008-140, s. 1.)

Effect of Amendments. — Session Laws 2008-140, s. 1, effective July 28, 2008, added subsection (g).

§ 130A-329. Reporting.

Reports required to be submitted under this Article or under rules adopted by the Commission shall be submitted electronically on a form specified by the Department. The Department may waive the requirement for electronic submission of a report if the water system demonstrates that it lacks the technical capability to report electronically. (2008-143, s. 12.)

Editor's Note. — Session Laws 2008-143, s. 21, made this section effective July 31, 2008.

Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

ARTICLE 11.

Wastewater Systems.

§ 130A-335. Wastewater collection, treatment and disposal; rules.

(a) A person owning or controlling a residence, place of business or a place of public assembly shall provide an approved wastewater system. Except as may be allowed under another provision of law, all wastewater from water-using fixtures and appliances connected to a water supply source shall discharge to the approved wastewater system. A wastewater system may include components for collection, treatment and disposal of wastewater.

(b) All wastewater systems shall be regulated by the Department under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

(1) Wastewater collection, treatment, and disposal systems designed to discharge effluent to the land surface or surface waters.
(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.
(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(c) A wastewater system subject to approval under rules of the Commission shall be reviewed and approved under rules of a local board of health in the following circumstances:

(1) The local board of health, on its own motion, has requested the Department to review its proposed rules concerning wastewater systems; and

(2) The local board of health has adopted by reference the wastewater system rules adopted by the Commission, with any more stringent modifications or additions deemed necessary by the local board of health to protect the public health; and

(3) The Department has found that the rules of the local board of health concerning wastewater collection, treatment and disposal systems are at least as stringent as rules adopted by the Commission and are sufficient and necessary to safeguard the public health.

(d) The Department may, upon its own motion, upon the request of a local board of health or upon the request of a citizen of an affected county, review its findings under subsection (c) of this section.

The Department shall review its findings under subsection (c) of this section upon modification by the Commission of the rules applicable to wastewater systems. The Department may deny, suspend, or revoke the approval of local board of health wastewater system rules upon a finding that the local wastewater rules are not as stringent as rules adopted by the Commission, are not sufficient and necessary to safeguard the public health, or are not being enforced. Suspension and revocation of approval shall be in accordance with G.S. 130A-23.

(e) The rules of the Commission and the rules of the local board of health shall address at least the following: Wastewater characteristics; Design unit; Design capacity; Design volume; Criteria for the design, installation, operation, maintenance and performance of wastewater collection, treatment and disposal systems; Soil morphology and drainage; Topography and landscape position; Depth to seasonally high water table, rock and water impeding formations; Proximity to water supply wells, shellfish waters, estuaries, marshes, wetlands, areas subject to frequent flooding, streams, lakes, swamps and other bodies of surface or groundwaters; Density of wastewater collection, treatment and disposal systems in a geographical area; Requirements for issuance, suspension and revocation of permits; and Other factors which affect the effective operation and performance of wastewater collection, treatment and disposal systems. The rules regarding required design capacity and required design volume for wastewater systems shall provide that exceptions may be granted upon a showing that a system is adequate to meet actual daily water consumption.

(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the rules, or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit.

(f1) A preconstruction conference with the owner or developer, or an agent of the owner or developer, and a representative of the local health department shall be required for any authorization for wastewater system construction issued with an improvement permit under G.S. 130-336 when the authorization is greater than five years old. Following the conference, the local health department shall issue a revised authorization for wastewater system construction that includes current technology that can reasonably be expected to improve the performance of the system.

(f2) For each septic tank system that is designed to treat 3,000 gallons per day or less of sewage, rules adopted pursuant to subsection (f) of this section shall require the use of an effluent filter to reduce the total suspended solids entering the drainfield and the use of an access device for each compartment of the septic tank to provide access to the compartment in order to facilitate maintenance of the septic tank. The Commission shall not adopt specifications for the effluent filter and access device that exceed the requirements of G.S. 130A-335.1. Neither this section nor G.S. 130A-335.1 shall be construed to prohibit the use of an effluent filter or access device that exceeds the requirements of G.S. 130A-335.1. The Department shall approve effluent filters that meet the requirements of this section, G.S. 130A-335.1, and rules adopted by the Commission.

(g) Prior to denial of an improvement permit, the local health department shall advise the applicant of possible site modifications or alternative systems, and shall provide a brief description of those systems. When an improvement permit is denied, the local health department shall issue the site evaluation in writing stating the reasons for the unsuitable classification. The evaluation shall also inform the applicant of the right to an informal review by the Department, the right to appeal under G.S. 130A-24, and to have the appeal held in the county in which the site for which the improvement permit was requested is located.

(h) Except as provided in this subsection, a chemical or portable toilet may be placed at any location where the chemical or portable toilet can be operated and maintained under sanitary conditions. A chemical or portable toilet shall not be used as a replacement or substitute for a water closet or urinal where a water closet or urinal connected to a permanent wastewater treatment system is required by the North Carolina State Building Code, except that a chemical or portable toilet may be used to supplement a water closet or urinal during periods of peak use. A chemical or portable toilet shall not be used as an alternative to the repair of a water closet, urinal, or wastewater treatment system. It shall be unlawful to discharge sewage or other waste from a chemical or portable toilet used for human waste except into a wastewater system that has been approved by the Department under rules adopted by the Commission or by the Environmental Management Commission or at a site that is permitted by the Department under G.S. 130A-291.1. (1957, c. 1357, s. 1; 1973, c. 471, s. 1; c. 476, s. 128; c. 860; 1977, c. 857, s. 1; 1979, c. 788, s. 2; 1981, c. 949, s. 3; c. 1127, s. 47; 1983, c. 891, s. 2; 1987, c. 267, ss. 1, 2; 1989, c. 727, s. 147; c. 764, ss. 6, 7; 1989 (Reg. Sess., 1990), c. 1075, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 4; 1993, c. 173, s. 5; 1995, c. 285, s. 1; 1995 (Reg. Sess., 1996), c. 585, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 27.31(c); 1998-126, s. 1; 1998-217, s. 46(a); 2008-143, s. 13.)

Editor's Note. —

Session Laws 2008-143, s. 14, provides: "(a) For purposes of this section, 'gray water' means wastewater removed from household wash basins, bathtubs, and showers.

"(b) The Commission for Health Services shall adopt rules to authorize the use of gray water during periods of drought to hand water trees, shrubs, and inedible plants on single-family residential property. The rules shall encourage the use of gray water as provided in this section while protecting public health, safety, welfare, and the environment. In developing the rules, the Commission shall review the provisions set out in subsection (c) of this section.

"(c) Notwithstanding G.S. 130A-335(a), untreated gray water may be used in periods of drought to hand water trees, shrubs, and inedible plants on single-family residential property under the following conditions:

"(1) Gray water shall be applied as soon as practicable. Untreated gray water should not be stored for later use.

"(2) Gray water containing hazardous chemicals including, but not limited to, residue from solvents shall not be used.

"(3) Use of untreated gray water is restricted to the residential property where the gray water originates. Untreated gray water shall not be allowed to run off onto adjoining property, roadways, or into drainage features such as ditches and storm drains.

"(4) Untreated gray water shall be applied using buckets, watering cans, or other handheld containers. Gray water may not be used in an irrigation system unless the gray water has been treated in accordance with standards set out in the State Plumbing Code.

"(5) Gray water shall not be applied closer than 100 feet to surface waters or a water supply well."

Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

Session Laws 2008-143, s. 21 provides that Session Laws 2008-143, s. 14(c), noted above, is effective July 31, 2008, and expires when rules adopted pursuant to Session Laws 2008-143, s. 14(b), become effective.

Effect of Amendments. — Session Laws 2008-143, s. 13, effective July 31, 2008, inserted the second sentence in subsection (a).

ARTICLE 16.

Postmortem Investigation and Disposition.

Part 1. Postmortem Medicolegal Examinations and Services.

§ 130A-383. Medical examiner jurisdiction.

(a) Upon the death of any person resulting from violence, poisoning, accident, suicide or homicide; occurring suddenly when the deceased had been in apparent good health or when unattended by a physician; occurring in a jail, prison, correctional institution or in police custody; occurring in State facilities operated in accordance with Part 5 of Article 4 of Chapter 122C of the General Statutes; occurring pursuant to Article 19 of Chapter 15 of the General Statutes; or occurring under any suspicious, unusual or unnatural circumstance, the medical examiner of the county in which the body of the deceased is found shall be notified by a physician in attendance, hospital employee, law-enforcement officer, funeral home employee, emergency medical technician, relative or by any other person having suspicion of such a death. No person shall disturb the body at the scene of such a death until authorized by the medical examiner unless in the unavailability of the medical examiner it is determined by the appropriate law enforcement agency that the presence of the body at the scene would risk the integrity of the body or provide a hazard to the safety of others. For the limited purposes of this Part, expression of opinion that death has occurred may be made by a nurse, an emergency medical technician or any other competent person in the absence of a physician.

(b) The discovery of anatomical material suspected of being part of a human body shall be reported to the medical examiner of the county in which the material is found.

(c) Upon completion of the investigation and in accordance with the rules of the Commission, the medical examiner shall release the body to the next of kin or other interested person who will assume responsibility for final disposition. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1; 1983, c. 891, s. 2; 1989, c. 353, s. 1; 2008-131, s. 2.)

Effect of Amendments. — Session Laws 2008-131, s. 2, effective July 28, 2008, inserted "occurring in State facilities operated in accordance with Part 5 of Article 4 of Chapter 122C of the General Statutes" in the first sentence of subsection (a).

§ 130A-391: Repealed by Session Laws 2008-153, s. 3, effective August 2, 2008.

Part 3A. Revised Uniform Anatomical Gift Act.

§ 130A-412.14. Search and notification.

A search of an individual who is reasonably believed to be dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal, and, if applicable, notification of the hospital to which the individual is taken, shall be governed by G.S. 90-602. (2007-538, s. 1; 2008-153, s. 2.)

Effect of Amendments. — Session Laws 2008-153, s. 2, effective August 2, 2008, rewrote the section.

§ 130A-412.31. Giving of blood by persons 16 years of age or more.

A person who is 16 years of age or more may give or donate blood to an individual, hospital, blood bank or blood collection center without the consent of the parent or parents or guardian of the donor. It shall be unlawful for a person under the age of 18 years to sell blood. (1971, c. 10; c. 1093, s. 16; 1977, c. 373; 1983, c. 891, s. 2; 2007-538, s. 3(a); 2008-153, s. 9.)

Effect of Amendments. — Session Laws 2008-153, s. 9, effective August 2, 2008, substituted "16 years" for "17 years" in the section heading and in the first sentence.

Part 5. Disposition of Unclaimed Bodies.

§ 130A-415. Unclaimed bodies; bodies claimed by the Lifeguardianship Council of the Association for Retarded Citizens of North Carolina; disposition.

(a) Any person, including officers, employees and agents of the State or of any unit of local government in the State, undertakers doing business within the State, hospitals, nursing homes or other institutions, having physical possession of a dead body shall make reasonable efforts to contact relatives of the deceased or other persons who may wish to claim the body for final disposition. If the body remains unclaimed for final disposition for 10 days, the person having possession shall notify the Commission of Anatomy. Upon request of the Commission of Anatomy, the person having possession shall deliver the dead body to the Commission of Anatomy at a time and place specified by the Commission of Anatomy or shall permit the Commission of Anatomy to take and remove the body.

(b) All dead bodies not claimed for final disposition within 10 days of the decedent's death may be received and delivered by the Commission of Anatomy pursuant to the authority contained in G.S. 130A-33.30 and this Part and in accordance with the rules of the Commission of Anatomy. Upon receipt of a body by the Commission of Anatomy all interests in and rights to the unclaimed dead body shall vest in the Commission of Anatomy. The recipient to which the Commission of Anatomy delivers the body shall pay all expenses for the embalming and delivery of the body, and for the reasonable expenses arising from efforts to notify relatives or others.

(b1) The 10-day period referenced in subsections (a) and (b) of this section may be shortened by the county director of social services upon determination that a dead body will not be claimed for final disposition within the 10-day period.

(c) Should the Commission of Anatomy decline to receive a dead body, the person with possession shall inform the director of social services of the county in which the body is located. The director of social services of that county shall arrange for prompt final disposition of the body, either by cremation or burial. Reasonable costs of disposition and of efforts made to notify relatives and others shall be considered funeral expenses and shall be paid in accordance with G.S. 28A-19-6 and G.S. 28A-19-8. If those expenses cannot be satisfied from the decedent's estate, they shall be borne by the decedent's county of residence. If the deceased is not a resident of this State, or if the county of residence is unknown, those expenses shall be borne by the county in which the death occurred.

(d) No autopsy shall be performed on an unclaimed body without the written consent of the Commission of Anatomy except that written consent is not required for an autopsy performed pursuant to Part 2 of this Article.

(e) Due caution shall be taken to shield the unclaimed body from public view.

(f) Notwithstanding anything contained in this section, an unclaimed body shall not mean a dead body for which the deceased has made a gift pursuant to Part 3A of this Article.

(g) Nothing in this Part shall require the officers, employees or agents of a county to notify the Commission of Anatomy regarding the bodies of minors who were in the custody of the county at the time of death and whose final disposition will be arranged by the county. In the absence of notification, the expenses of the final disposition shall be a charge upon the county having custody.

(h) The provisions of this Part shall not apply to bodies within the jurisdiction of the medical examiner under G.S. 130A-383 or 130A-384.

(i) In addition to the other duties of the Commission of Anatomy, when the Commission of Anatomy is notified by the Lifeguardianship Council of the Association of Retarded Citizens of North Carolina, Inc., that the Council intends to claim a body, the Commission shall release the body to the Council. The Lifeguardianship Council shall notify the Commission of Anatomy within 24 hours after death of its intent to claim a body for burial or other humane and caring disposition. (1975, c. 694, s. 3; 1977, c. 458; 1983, c. 891, s. 2; 1987, c. 470; 1989, c. 222; c. 770, s. 75; 2008-153, s. 7.)

Effect of Amendments. — Session Laws 2008-153, s. 7, effective August 2, 2008, substituted "Part 3A" for "Part 3" in subsection (f).

Part 7. Disposition of Body or Body Parts.

§ 130A-420. Authority to dispose of body or body parts.

(a) An individual at least 18 years of age may authorize the type, place, and method of disposition of the individual's own dead body by methods in the following order:

(1) Pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes.

(2) Pursuant to a written will.

(3) Pursuant to a written statement other than a will signed by the individual and witnessed by two persons who are at least 18 years old.

(4) Pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes.

An individual may also delegate his or her right to dispose of his or her own dead human body to any person by any means authorized in subdivisions (1) through (3) of this subsection.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

(1) The surviving spouse.

(2) A majority of the surviving children over 18 years of age, who can be located after reasonable efforts.

(3) The surviving parents.

(4) A majority of the surviving siblings over 18 years of age, who can be located after reasonable efforts.

(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.

(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

(7) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent.

(8) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution.

(9) In the absence of any of the persons described in subdivisions (1) through (8) of this subsection, any person willing to assume responsibility for the disposition of the body.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63, or to permit modification of preneed contracts under G.S. 90-210.63A. If an individual is incompetent at the time of the decedent's death, the individual shall be treated as if he or she predeceased the decedent. An attending physician may certify the incompetence of an individual and the certification shall apply to the rights under this section only. Any individual under this section may waive his or her rights under this subsection by any written statement notarized by a notary public or signed by two witnesses.

(b1) A person who does not exercise his or her right to dispose of the decedent's body under subsection (b) of this section within five days of notification or 10 days from the date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or contest disposition in accordance with this section.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3A of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes. (1997-399, s. 34; 2007-531, s. 26; 2008-153, s. 8.)

Effect of Amendments. — Session Laws 2008-153, s. 8, effective August 2, 2008, substituted "Part 3A" for "Part 3" in subsection (d).

ARTICLE 19.

Asbestos Hazard Management.

§ 130A-450. Asbestos containing material removal permit fees.

An applicant for an asbestos containing material removal permit is subject to a fee payable to the Department. The fee is a departmental receipt of the Department and must be used to offset the cost of the asbestos hazard management program. An applicant for a permit must indicate whether the asbestos is to be removed as part of a renovation or a demolition. If the asbestos is to be removed as part of a renovation, the fee is the amount set by the Department and may not exceed one percent (1%) of the contracted price or twenty cents ($.20) per square foot or linear foot of asbestos containing material to be removed, whichever is greater. If the asbestos is to be removed as part of a demolition, the fee is the greater of the following, not to exceed one thousand five hundred dollars ($1,500):

(1) One percent (1%) of the contracted price.

(2) An amount set by the Department not to exceed twenty cents ($.20) per square foot or linear foot of asbestos containing material to be removed. (1989, c. 724, s. 1; 2008-107, s. 29.6(a).)

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 29.6(a), effective July 20, 2008, rewrote the section.

ARTICLE 23.

Smoking in Public Places.

Part 1. Smoking in State Government Buildings.

§ 130A-491. (Effective January 1, 2009) Legislative intent.

It is the intent of the General Assembly to protect the health of individuals working in or visiting State government buildings from the risks related to secondhand smoke. It is further the intent of the General Assembly to protect the health of individuals driving or riding in State-controlled passenger-carrying vehicles assigned permanently or temporarily to State employees or State agencies or institutions for official State business. (2007-193, s. 1; 2008-149, s. 1.)

Section Set Out Twice. — The section above is effective January 1, 2009. For the section as in effect until January 1, 2009, see the main volume.

Effect of Amendments. — Session Laws 2008-149, s. 1, effective January 1, 2009, added the second sentence.

§ 130A-492. (Effective January 1, 2009) Definitions.

The following definitions apply in this Article:

(1) through (7). Reserved.

(8) "Local vehicle". — A passenger-carrying vehicle owned, leased, or otherwise controlled by local government and assigned permanently or temporarily by local government to local government employees, agencies, institutions, or facilities for official local government business.

(9) "Smoking". — The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

(10) "State government". — The political unit for the State of North Carolina, including all agencies of the executive, judicial, and legislative branches of government.

(11) "State government building". — A building owned, leased as lessor, or the area leased as lessee and occupied by State government.

(12) "State vehicle". — A passenger-carrying vehicle owned, leased, or otherwise controlled by the State and assigned permanently or temporarily to a State employee or State agency or institution for official State business. (2007-193, s. 1; 2008-149, s. 2.)

Section Set Out Twice. — The section above is effective January 1, 2009. For the section as in effect until January 1, 2009, see the main volume.

Editor's Note. — At the direction of the Revisor of Statutes, subdivisions (1) through (7) have been set out as reserved and subdivisions (5), and (8) through (11), have been renumbered as subdivisions (8) through (12), respectively.

Effect of Amendments. — Session Laws 2008-149, s. 2, effective January 1, 2009, rewrote the section.

§ 130A-493. (Effective January 1, 2009) Smoking in State government buildings and State vehicles prohibited.

(a) Notwithstanding Article 64 of Chapter 143 of the General Statutes pertaining to State-controlled buildings, smoking is prohibited inside State government buildings as provided in this section. As to smoking rooms in residence halls that were permitted by G.S. 143-597(a)(6), this Article becomes effective beginning with the 2008-2009 academic year.

(b) Smoking is permitted inside State government buildings that are used for medical or scientific research to the extent that smoking is an integral part of the research. Smoking permitted under this subsection shall be confined to the area where the research is being conducted.

(c) The individual in charge of the State government building or the individual's designee shall post signs in conspicuous areas of the building. The signs shall state that "smoking is prohibited" and may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. In addition, in any State psychiatric hospital, the person who owns, manages, operates, or otherwise controls the hospital shall:

(1) Direct any person who is smoking inside the facility to extinguish the lighted smoking product.

(2) Provide written notice to individuals upon admittance that smoking is prohibited inside the facility and obtain the signature of the individual or the individual's representative acknowledging receipt of the notice.

(c1) Smoking is prohibited inside State vehicles. The individual or the individual's designee in charge of assigning the vehicle shall place one or more signs in conspicuous areas of the vehicle. The signs shall state that "smoking is prohibited" and may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. If the vehicle is used for undercover law enforcement operations, a sign is not required to be placed in the vehicle as provided in this subsection.

(d) Notwithstanding G.S. 130A-25, a violation of Article 23 of this Chapter shall not be punishable as a criminal violation. (2007-193, s. 1; 2007-459, s. 4.1; 2008-149, s. 3.)

Section Set Out Twice. — The section above is effective January 1, 2009. For the section as in effect until January 1, 2009, see the main volume.

Effect of Amendments. — Session Laws 2008-149, s. 3, effective January 1, 2009, in the section heading, inserted "and State vehicles"; and added subsection (c1).

§ 130A-498. (Effective until January 1, 2009) Local governments may restrict smoking in public places.

(a) Notwithstanding any other provision of Article 64 of Chapter 143 of the General Statutes to the contrary, a local government may adopt an ordinance, law, or rule restricting smoking in accordance with subsection (b) of this section.

(b) Any local ordinance, law, or rule authorized under this section may restrict smoking only in:

(1) Buildings owned, leased as lessor, or the area leased as lessee and occupied by local government;

(2) Building and grounds wherein local health departments and departments of social services are housed;

(3) Repealed by Session Laws 2007-193, s. 3.1, effective August 1, 2008.

(4) Any place on a public transportation vehicle owned or leased by local government and used by the public.

(c) As used in this Part, "local government" means any local political subdivision of this State, any airport authority, or any authority or body created by any ordinance, joint resolution, or rules of any such entity. As used

G.S. 130A-498 is set out twice. See notes.

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in this Part, "local government" does not include community colleges as defined in G.S. 115D-2(2).

(d) As used in this Part, "grounds" means the area located within 50 linear feet of a building wherein a local health department or a local department of social services is housed.

(e) A county ordinance adopted under this section is subject to the provisions of G.S. 153A-122. (2007-193, ss. 2, 3.1; 2007-484, s. 31.7; 2008-95, s. 1.)

Section Set Out Twice. — The section above is effective until January 1, 2009. For the section as amended January 1, 2009, see the following section, also numbered G.S. 130A-498.

Effect of Amendments. —

Session Laws 2008-95, s. 1, effective July 11, 2008, added the last sentence in subsection (c).

§ 130A-498. (Effective January 1, 2009) Local governments may restrict smoking in public places.

(a) Notwithstanding any other provision of Article 64 of Chapter 143 of the General Statutes to the contrary, a local government may adopt an ordinance, law, or rule restricting smoking in accordance with subsection (b) of this section.

(b) Any local ordinance, law, or rule authorized under this section may restrict smoking only in:

(1) Buildings owned, leased as lessor, or the area leased as lessee and occupied by local government;

(2) Building and grounds wherein local health departments and departments of social services are housed;

(3) Repealed by Session Laws 2007-193, s. 3.1, effective August 1, 2008.

(4) Any place on a public transportation vehicle owned or leased by local government and used by the public; and

(5) Any place in a local vehicle.

(c) As used in this Part, "local government" means any local political subdivision of this State, any airport authority, or any authority or body created by any ordinance, joint resolution, or rules of any such entity. As used in this Part, "local government" does not include community colleges as defined in G.S. 115D-2(2).

(d) As used in this Part, "grounds" means the area located within 50 linear feet of a building wherein a local health department or a local department of social services is housed.

(e) A county ordinance adopted under this section is subject to the provisions of G.S. 153A-122. (2007-193, ss. 2, 3.1; 2007-484, s. 31.7; 2008-95, s. 1; 2008-149, s. 4.)

Section Set Out Twice. — The section above is effective January 1, 2009. For the section as in effect until January 1, 2009, see the preceding section, also numbered G.S. 130A-498.

Effect of Amendments. — Session Laws 2008-95, s. 1, effective July 11, 2008, added the last sentence in subsection (c).

Session Laws 2008-149, s. 4, effective January 1, 2009, added subdivision (b)(5) and made related changes.

Chapter 131D.

Inspection and Licensing of Facilities.

Article 1.

Licensing of Facilities.

Sec.
131D-2. Licensing of adult care homes for the aged and disabled.

Article 1.

Licensing of Facilities.

§ 131D-2. Licensing of adult care homes for the aged and disabled.

(a) The following definitions will apply in the interpretation of this section:

(1) "Abuse" means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of an adult care home of services which are necessary to maintain mental and physical health.

(1a) "Administrator" means a person approved by the Department of Health and Human Services who has the responsibility for the total operation of a licensed domiciliary home.

(1b) "Adult care home" is an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes.

(1c) "Amenities" means services such as meals, housekeeping, transportation, and grocery shopping that do not involve hands-on personal care.

(1d) "Assisted living residence" means any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102. Effective October 1, 2005, there are two types of assisted living residences: adult care homes and adult care homes that serve only elderly persons. As used in this section, "elderly person" means:

G.S. 131D-2(a)(7a) is set out twice. See note.

a. Any person who has attained the age of 55 years or older and requires assistance with activities of daily living, housing, and services, or

b. Any adult who has a primary diagnosis of Alzheimer's disease or other form of dementia who requires assistance with activities of daily living, housing, and services provided by a licensed Alzheimer's and dementia care unit.

Effective July 1, 1996, there is a third type, multiunit assisted housing with services.

(1e) "Compensatory agent" means a spouse, relative, or other caretaker who lives with a resident and provides care to a resident.

(1f) "Department" means the Department of Health and Human Services unless some other meaning is clearly indicated from the context.

(2) Repealed by Session Laws 2001-209, s. 1(a), effective June 15, 2001.

(3) Repealed by Session Laws 1995, c. 535, s. 8.

(4) "Exploitation" means the illegal or improper use of an aged or disabled resident or his resources for another's profit or advantage.

(5) "Family care home" means an adult care home having two to six residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.

(6) Repealed by Session Laws 2001-209, s. 1(b), effective June 15, 2001.

(7) Repealed by Session Laws 1995, c. 535, s. 8.

(7a) **(Effective until January 1, 2010)** Effective July 1, 1996, "multiunit assisted housing with services" means an assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency, through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register with the Division of Health Service Regulation and to provide a disclosure statement. The disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements:

a. Emergency response system;
b. Charges for services offered;
c. Limitations of tenancy;
d. Limitations of services;
e. Resident responsibilities;
f. Financial/legal relationship between housing management and home care or hospice agencies;
g. A listing of all home care or hospice agencies and other community services in the area;

G.S. 131D-2(a)(7a) is set out twice. See note.

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h. An appeals process; and

i. Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities, subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes, are exempt from the regulatory requirements for multiunit assisted housing with services programs.

(7a) **(Effective January 1, 2010)** Effective July 1, 1996, "multiunit assisted housing with services" means an assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency, through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register annually with the Division of Health Service Regulation. The Department shall charge each registered multiunit assisted housing with services program a nonrefundable annual registration fee of three hundred and fifty dollars ($350.00). Any individual or corporation that establishes, conducts, manages, or operates a multiunit housing with services program, subject to registration under this section, that fails to register is guilty of a Class 3 misdemeanor, and upon conviction shall be punishable only by a fine of not more than fifty dollars ($50.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense. Multiunit assisted housing with services programs are required to provide a disclosure statement to the Division of Health Service Regulation. The disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements:

a. Emergency response system;

b. Charges for services offered;

c. Limitations of tenancy;

d. Limitations of services;

e. Resident responsibilities;

f. Financial/legal relationship between housing management and home care or hospice agencies;

g. A listing of all home care or hospice agencies and other community services in the area;

h. An appeals process; and

i. Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities, subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes,

G.S. 131D-2(a)(7a) is set out twice. See note.

are exempt from the regulatory requirements for multiunit assisted housing with services programs.

(8) "Neglect" means the failure to provide the services necessary to maintain a resident's physical or mental health.

(9) "Personal care services" means any hands-on services allowed to be performed by In-Home Aides II or III as outlined in Department rules.

(10) "Registration" means the submission by a multiunit assisted housing with services provider of a disclosure statement containing all the information as outlined in subdivision (7a) of this subsection.

(11) "Resident" means a person living in an assisted living residence for the purpose of obtaining access to housing and services provided or made available by housing management.

(12) "Secretary" means the Secretary of Health and Human Services unless some other meaning is clearly indicated from the context.

(a1) Persons not to be cared for in adult care homes. — Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation, adult care homes shall not care for individuals with any of the following conditions or care needs:

(1) Ventilator dependency;

(2) Individuals requiring continuous licensed nursing care;

(3) Individuals whose physician certifies that placement is no longer appropriate;

(4) Individuals whose health needs cannot be met in the specific adult care home as determined by the residence; and

(5) Such other medical and functional care needs as the Medical Care Commission determines cannot be properly met in an adult care home.

(a2) Persons not to be cared for in multiunit assisted housing with services. — Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation, multiunit assisted housing with services shall not care for individuals with any of the following conditions or care needs:

(1) Ventilator dependency;

(2) Dermal ulcers III and IV, except those stage III ulcers which are determined by an independent physician to be healing;

(3) Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a home care or hospice agency licensed in this State;

(4) Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;

(5) Psychotropic medications without appropriate diagnosis and treatment plans;

(6) Nasogastric tubes;

(7) Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube, or as managed by a home care or hospice agency licensed in this State;

(8) Individuals requiring continuous licensed nursing care;

(9) Individuals whose physician certifies that placement is no longer appropriate;

(10) Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented

by a uniform assessment instrument and who meet Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on a uniform assessment instrument;

(11) Individuals whose health needs cannot be met in the specific multiunit assisted housing with services as determined by the residence; and

(12) Such other medical and functional care needs as the Medical Care Commission determines cannot be properly met in multiunit assisted housing with services.

(a3) Hospice care. — At the request of the resident, hospice care may be provided in an assisted living residence under the same requirements for hospice programs as described in Article 10 of Chapter 131E of the General Statutes.

(b) Licensure; inspections. —

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of two hundred fifty dollars ($250.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of three hundred fifty dollars ($350.00) plus a nonrefundable annual per-bed fee of twelve dollars and fifty cents ($12.50). A license shall not be renewed nor a new license issued for a change of ownership of an adult care home if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;

b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and

c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

a. The Department finds that:

1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General

Statutes and the rules adopted pursuant to these Articles; and

2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or

b. The Department finds that:

1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and

2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or

c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license.

(1a) In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection:

a. The Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. All facilities licensed under this Article and adult care units in nursing homes are subject to inspections at all times by the Secretary. The Division of Health Service Regulation shall inspect all adult care homes and adult care units in nursing homes on an annual basis, effective July 1, 2007, and thereafter. In addition, the Department shall ensure that adult care homes are inspected every two years to determine compliance with physical plant and life-safety requirements.

b. The Department shall work with county departments of social services to do the routine monitoring in adult care homes to ensure compliance with State and federal laws, rules, and regulations in accordance with policy and procedures established by the Division of Health Service Regulation and to have the Division of Health Service Regulation oversee this monitoring and perform any required follow-up inspection. The county departments of social services shall document in a written report all on-site visits, including monitoring visits, revisits, and complaint investigations. The county departments of social services shall submit to the Division of Health Service Regulation written reports of each facility visit within 20 working days of the visit.

c. The Division of Health Service Regulation shall conduct and document annual reviews of the county departments of social services' performance. When monitoring is not done timely or there is failure to identify or document noncompliance, the Department may intervene in the particular service in question.

Department intervention shall include one or more of the following activities:

1. Sending staff of the Department to the county departments of social services to provide technical assistance and to monitor the services being provided by the facility.
2. Advising county personnel as to appropriate policies and procedures.
3. Establishing a plan of action to correct county performance.

The Secretary may determine that the Department shall assume the county's regulatory responsibility for the county's adult care homes.

d. The county departments of social services' adult home specialists and their supervisors shall complete:

1. Eight hours of prebasic training within 60 days of employment;
2. Thirty-two hours of basic training within six months of employment;
3. Twenty-four hours of postbasic training within six months of the basic training program;
4. A minimum of eight hours of complaint investigation training within six months of employment; and
5. A minimum of 16 hours of statewide training annually by the Division of Health Service Regulation.

e. The Department shall monitor regularly the enforcement of rules pertaining to air circulation, ventilation, and room temperature in resident living quarters. These rules shall include the requirement that air conditioning or at least one fan per resident bedroom and living and dining areas be provided when the temperature in the main center corridor exceeds 80 degrees Fahrenheit.

f. The Department shall keep an up-to-date directory of all persons who are administrators as defined in subdivision (1a) of subsection (a) of this section.

(1b) No new license shall be issued for any adult care home to an applicant for licensure who:

a. Was the owner, principal, or affiliate of a licensable facility under Chapter 122C, Chapter 131D, or Article 7 of Chapter 110 that had its license revoked until one full year after the date of revocation;

b. Is the owner, principal, or affiliate of an adult care home that was assessed a penalty for a Type A or Type B violation until the earlier of one year from the date the penalty was assessed or until the home has substantially complied with the correction plan established pursuant to G.S. 131D-34 and substantial compliance has been certified by the Department; or

c. Is the owner, principal, or affiliate of an adult care home that had its license summarily suspended or downgraded to provisional status as a result of Type A or B violations until six months from the date of reinstatement of the license, restoration from provisional to full licensure, or termination of the provisional license, as applicable.

d. Is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under Chapter 122C, or Article 1 of Chapter 131D, or had its license summarily suspended or denied under Article 7 of Chapter 110 until six months from the date of the reinstatement of the license, restoration from provisional to full licensure, or termination of the provisional license, as applicable.

An applicant for new licensure may appeal a denial of certification of substantial compliance under subparagraph b. of this subdivision by filing with the Department a request for review by the Secretary within 10 days of the date of denial of the certification. Within 10 days of receipt of the request for review the Secretary shall issue to the applicant a written determination that either denies certification of substantial compliance or certifies substantial compliance. The decision of the Secretary is final.

(2) Any individual or corporation that establishes, conducts, manages, or operates a facility subject to licensure under this section without a license is guilty of a Class 3 misdemeanor, and upon conviction shall be punishable only by a fine of not more than fifty dollars ($50.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(3) In addition, the Department may summarily suspend a license pursuant to G.S. 150B-3(c) whenever it finds substantial evidence of abuse, neglect, exploitation or any condition which presents an imminent danger to the health and safety of any resident of the home. Any facility wishing to contest summary suspension of a license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of summary suspension to the licensee.

(4) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under subsection (b):

a. Department representatives may review any writing or other record concerning the admission, discharge, medication, care, medical condition, or history of any person who is or has been a resident of the facility being inspected, and

b. Any person involved in giving care or treatment at or through the facility may disclose information to Department representatives;

unless the resident objects in writing to review of his records or disclosure of such information.

The facility, its employees and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department.

The Department shall not disclose:

a. Any confidential or privileged information obtained under this subsection unless the resident or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure, or

b. The name of anyone who has furnished information concerning a facility without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. All confidential or privileged information obtained under this section and the names of persons providing such information shall be exempt from Chapter 132 of the General Statutes.

(5) Notwithstanding any law to the contrary, Chapter 132 of the General Statutes, the Public Records Law, applies to all records of the State Division of Social Services of the Department of Health and Human

Services and of any county department of social services regarding inspections of domiciliary care facilities except for information in the records that is confidential or privileged, including medical records, or that contains the names of residents or complainants.

(6) Prior to issuing a new license or renewing an existing license, the Department shall conduct a compliance history review of the facility and its principals and affiliates. The Department may refuse to license a facility when the compliance history review shows a pattern of noncompliance with State law by the facility or its principals or affiliates, or otherwise demonstrates disregard for the health, safety, and welfare of residents in current or past facilities. The Department shall require compliance history information and make its determination according to rules adopted by the Medical Care Commission.

(c) The following are excluded from the provisions of this section and are not required to be registered or obtain licensure under this section:

(1) Facilities licensed under Chapter 122C or Chapter 131E of the General Statutes;
(2) Persons subject to rules of the Division of Vocational Rehabilitation Services;
(3) Facilities that care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration;
(4) Facilities that make no charges for housing, amenities, or personal care service, either directly or indirectly; and
(5) Institutions that are maintained or operated by a unit of government and that were established, maintained, or operated by a unit of government and exempt from licensure by the Department on September 30, 1995.

(c1) Although the contract obligation still remains to pay the housing management for any services covered by the contract between the resident and housing management, the resident of an assisted living facility has the right to obtain services not at the expense of the housing management, from providers other than the housing management.

(c2) The Medical Care Commission shall adopt rules necessary to carry out this section. The Commission has the authority, in adopting rules, to specify the limitation of nursing services provided by assisted living residences. In developing rules, the Commission shall consider the need to ensure comparable quality of services provided to residents, whether these services are provided directly by a licensed assisted living provider, licensed home care agency, or hospice. In adult care homes, living arrangements where residents require supervision due to cognitive impairments, rules shall be promulgated to ensure that supervision is appropriate and adequate to meet the special needs of these residents.

(c3) Nothing in this section shall be construed to supersede any federal or State antitrust, antikickback, or safe harbor laws or regulations.

(c4) Housing programs for two or more unrelated adults that target their services to elderly or disabled persons in which the only services provided by the housing management, either directly or through an agreement or other arrangements, are amenities that include, at a minimum, one meal a day and housekeeping services, are exempt from licensure, but are required to be listed with the Division of Aging, providing information on their location and number of units operated. This type of housing is not considered assisted living.

(d) Repealed by Session Laws 1995, c. 535, s. 8.

(e) The Department shall ensure that facilities conduct and complete an assessment of each resident within seventy-two hours of admitting the resident and annually thereafter. In conducting the assessment, the facility shall use an assessment instrument approved by the Secretary upon the advice of the Director of the Division of Aging. The Department shall provide ongoing training for facility personnel in the use of the approved assessment instrument.

The facility shall use the assessment to develop appropriate and comprehensive service plans and care plans and to determine the level and type of facility staff that is needed to meet the needs of residents. The assessment shall determine a resident's level of functioning and shall include, but not be limited to, cognitive status and physical functioning in activities of daily living. Activities of daily living are personal functions essential for the health and well-being of the resident. The assessment shall not serve as the basis for medical care. The assessment shall indicate if the resident requires referral to the resident's physician or other appropriate licensed health care professional or community resource.

The Department as part of its inspection and licensing of adult care homes shall review assessments and related service plans and care plans for a selected number of residents. In conducting this review, the Department shall determine:

(1) Whether the appropriate assessment instrument was administered and interpreted correctly;

(2) Whether the facility is capable of providing the necessary services;

(3) Whether the service plan or care plan conforms to the results of an appropriately administered and interpreted assessment; and

(4) Whether the service plans or care plans are being implemented fully and in accordance with an appropriately administered and interpreted assessment.

If the Department finds that the facility is not carrying out its assessment responsibilities in accordance with this section, the Department shall notify the facility and require the facility to implement a corrective action plan. The Department shall also notify the resident of the results of its review of the assessment, service plans, and care plans developed for the resident. In addition to administrative penalties, the Secretary may suspend the admission of any new residents to the facility. The suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.

(f) If any provisions of this section or the application of it to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(g) In order for an adult care home to maintain its license, it shall not hinder or interfere with the proper performance of duty of a lawfully appointed community advisory committee, as defined by G.S. 131D-31 and G.S. 131D-32.

(h) Suspension of admissions to adult care home:

(1) In addition to the administrative penalties described in subsection (b), the Secretary may suspend the admission of any new residents to an adult care home, where the conditions of the adult care home are detrimental to the health or safety of the residents. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.

(2) In imposing a suspension under this subsection, the Secretary shall consider the following factors:

a. The degree of sanctions necessary to ensure compliance with this section and rules adopted hereunder; and

b. The character and degree of impact of the conditions at the home on the health or safety of its residents.

(3) The Secretary of Health and Human Services shall adopt rules to implement this subsection.

(4) Any facility wishing to contest a suspension of admissions shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of suspension of admissions to the licensee.

(i) Notwithstanding the existence or pursuit of any other remedy, the Department of Health and Human Services may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of an adult care home without a license. Such action shall be instituted in the superior court of the county in which any unlicensed activity has occurred or is occurring.

If any person shall hinder the proper performance of duty of the Secretary or his representative in carrying out this section, the Secretary may institute an action in the superior court of the county in which the hindrance has occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

Actions under this subsection shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure.

(j) Adult care homes shall post the Division of Health Service Regulation's complaint hotline number conspicuously in a public place in the facility. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C.S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, ss. 128, 138; 1975, c. 729; 1981, c. 275, s. 2; c. 544, s. 1; 1983, c. 824, ss. 1-12; 1987, c. 827, ss. 1, 241; 1991, c. 572, ss. 1, 2; 1993, c. 321, s. 242; c. 530, s. 2; c. 539, s. 953; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 280, s. 1; c. 535, s. 8; 1997-443, s. 11A.118(a); 1997-456, s. 20; 1997-522, s. 1; 1999-113, ss. 1, 2; 1999-193, s. 1; 1999-334, ss. 1.2-1.5, 1.7, 1.14, 1.15, 3.3, 3.4; 1999-443, s. 2; 2000-140, s. 30; 2001-209, ss. 1(a), (b); 2001-487, s. 31; 2003-284, s. 34.1(a); 2003-294, s. 3; 2005-66, s. 1; 2005-276, ss. 10.40A(i), (j), (k), 41.2(a); 2007-182, s. 1; 2007-444, s. 5(a); 2008-166, s. 1.)

Subdivision (a)(7a) Set Out Twice. — The first version of subdivision (a)(7a) set out above is effective until January 1, 2010. The second version of subdivision (a)(7a) set out above is effective January 1, 2010.

Effect of Amendments. —

Session Laws 2008-166, s. 1, effective January 1, 2010, in the introductory paragraph of subdivision (a)(7a), in the sixth sentence, inserted "annually," deleted "and to provide a disclosure statement" from the end, and added the seventh through tenth sentences.

Chapter 131E.

Health Care Facilities and Services.

Article 6.

Health Care Facility Licensure Act.

Part 3. Home Care Agency Licensure Act.

Sec.
131E-136. Definitions.
131E-138. Licensure requirements.

Article 11A.

Medical Care Data.

131E-214.1. Definitions.

Article 13.

Temporary Management of Long-Term Care Facilities.

Sec.
131E-231. Definitions.

Article 16.

Miscellaneous Provisions.

131E-267. Fees for departmental review of licensed health care facility or Medical Care Commission bond-financed construction projects.

Article 2.

Public Hospitals.

Part 1. Municipal Hospitals.

§ 131E-8. Sale of hospital facilities to nonprofit corporations.

CASE NOTES

Section Does Not Necessarily Imply State Action. —
Because previously public hospital's status had been changed to private pursuant to a transfer under G.S. 131E-8 and a county's subsequent regulation of the hospital was not sufficiently related to the actions of the hospital and private physicians in suspending the medical privileges of plaintiff physician, plaintiff's 42 U.S.C.S. § 1983 claims were subject to dismissal for failure to state a claim. Philips v. Pitt County Mem. Hosp., Inc., 503 F. Supp. 2d 776, 2007 U.S. Dist. LEXIS 62402 (E.D.N.C. Aug. 2, 2007).

Article 5.

Hospital Licensure Act.

Part 1. Article Title and Definitions.

§ 131E-76. Definitions.

CASE NOTES

Cited in Cunningham v. Cannon, — N.C. App. —, 654 S.E.2d 24, 2007 N.C. App. LEXIS 2529 (2007).

Part 5. Medical Review Committee.

§ 131E-95. Medical review committee.

CASE NOTES

Documents Furnished by Applicants for Hospital Privileges. —

In a medical negligence suit, a doctor's application for hospital privileges was not exempt from discovery under G.S. 131E-95, which applied to information generated by a medical review committee, because the allegedly privileged information was not generated by a committee, but was provided by the doctor to the hospital in his application for privileges. Cunningham v. Cannon, — N.C. App. —, 654 S.E.2d 24, 2007 N.C. App. LEXIS 2529 (2007).

Cited in Yorke v. Novant Health, Inc., — N.C. App. —, 666 S.E.2d 127, 2008 N.C. App. LEXIS 1620 (2008).

ARTICLE 6.

Health Care Facility Licensure Act.

Part 3. Home Care Agency Licensure Act.

§ 131E-136. Definitions.

As used in this Part, unless otherwise specified:

(1) "Commission" means the North Carolina Medical Care Commission.

(1a) "Geographic service area" means the geographic area in which a licensed agency provides home care services.

(2) "Home care agency" means a private or public organization that provides home care services.

(2a) "Home care agency director" means the person having administrative responsibility for the operation of the licensed agency site.

(2b) "Home care client" means an individual who receives home care services.

(3) **(Effective until January 1, 2010)** "Home care services" means any of the following services and directly related medical supplies and appliances, which are provided to an individual in a place of temporary or permanent residence used as an individual's home:

a. Nursing care provided by or under the supervision of a registered nurse;

b. Physical, occupational, or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home;

c. Medical social services;

d. In-home aide services that involve hands-on care to an individual;

e. Infusion nursing services; and

f. Assistance with pulmonary care, pulmonary rehabilitation or ventilation.

The term does not include: health promotion, preventative health and community health services provided by public health departments; maternal and child health services provided by public health departments, by employees of the Department of Health and Human Services under G.S. 130A-124, or by developmental evaluation centers under contract with the Department of Health and Human Services to provide services under G.S. 130A-124; hospitals licensed under Article 5 of Chapter 131E of the General Statutes when providing follow-up care initiated to patients within six months after their discharge from the hospital; facilities and programs operated under the authority of G.S. 122C and providing services within the scope of G.S. 122C; schools, when providing services pursuant to Article 9 of Chapter 115C; the practice of midwifery by a person licensed under Article 10A of Chapter 90 of the General Statutes; hospices licensed under Article 10 of Chapter 131E of the General Statutes when providing care to a hospice patient; an individual who engages solely in providing his own services to other individuals; incidental health care provided by an employee of a physician licensed to practice medicine in North Carolina in the normal course of the physician's practice; or nursing registries if the registry discloses to a client or the client's responsible party, before providing any services, that (i) it is not a licensed home care agency, and (ii) it does not make any representations or guarantees concerning the training, supervision, or competence of the personnel provided.

(3) **(Effective January 1, 2010)** "Home care services" means any of the following services and directly related medical supplies and appliances, which are provided to an individual in a place of temporary or permanent residence used as an individual's home:

a. Nursing care provided by or under the supervision of a registered nurse.
b. Physical, occupational, or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home.
c. Medical social services.
d. In-home aide services that involve hands-on care to an individual.
e. Infusion nursing services.
f. Assistance with pulmonary care, pulmonary rehabilitation or ventilation.
g. In-home companion, sitter, and respite care services provided to an individual.
h. Homemaker services provided in combination with in-home companion, sitter, respite, or other home care services.

The term does not include: health promotion, preventative health and community health services provided by public health departments; maternal and child health services provided by public health departments, by employees of the Department of Health and Human Services under G.S. 130A-124, or by developmental evaluation centers under contract with the Department of Health and Human Services to provide services under G.S. 130A-124; hospitals licensed under Article 5 of Chapter 131E of the General Statutes when providing follow-up care initiated to patients within six months after their discharge from the hospital; facilities and programs operated under the authority of G.S. 122C and providing services within the scope of G.S. 122C; schools, when providing services pursuant to Article 9 of Chapter 115C; the practice of midwifery by a person licensed under Article 10A of Chapter 90 of the General Statutes; hospices licensed under Article 10 of Chapter 131E of the General Statutes when providing care to a hospice patient; an individual who engages solely in providing his own services to other individuals; incidental health care provided by an employee of a physician licensed to practice

G.S. 131E-136(3) is set out twice. See note.

medicine in North Carolina in the normal course of the physician's practice; or nursing registries if the registry discloses to a client or the client's responsible party, before providing any services, that (i) it is not a licensed home care agency, and (ii) it does not make any representations or guarantees concerning the training, supervision, or competence of the personnel provided. The term sitter does not include child care facilities licensed in accordance with Chapter 110 of the General Statutes. The term respite care does not include facilities or services licensed in accordance with Chapter 122C of the General Statutes. The terms in-home companion, sitter, homemaker, and respite care services do not include (i) services certified or otherwise overseen by the Department as not providing personal care or (ii) services administered on a voluntary basis for which there is not reimbursement from the recipient or anyone acting on the recipient's behalf.

(4) "Home health agency" means a home care agency which is certified to receive Medicare and Medicaid reimbursement for providing nursing care, therapy, medical social services, and home health aide services on a part-time, intermittent basis as set out in G.S. 131E-176(12), and is thereby also subject to Article 9 of Chapter 131E. (1971, c. 539, s. 1; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1022, s. 4; 1987, c. 34, s. 1; 1991, c. 59, s. 1; c. 761, s. 34; 1997-443, s. 11A.90; 2005-276, s. 10.40A(m); 2008-127, s. 1.)

Subdivision (3) Set Out Twice. — The first version of subdivision (3) set out above is effective until January 1, 2010. The second version of subdivision (3) set out above is effective January 1, 2010.

Editor's Note. — Session Laws 2008-127, s. 3, provides: "The North Carolina Medical Care Commission shall adopt rules to implement Section 1 of this act."

Effect of Amendments. — Session Laws 2008-127, s. 1, effective January 1, 2010, made minor punctuation changes in subdivisions (3)a. through (3)f., added subdivisions (3)g. and (3)h.; and added the last three sentences of the concluding paragraph of subdivision (3).

§ 131E-138. Licensure requirements.

(a) No person or governmental unit shall operate a home care agency without a license obtained from the Department. Nothing in this Part shall be construed to extend or modify the licensing of individual health professionals by the licensing boards for their professions or to create any new professional license category.

(b) Repealed by Session Laws 1991, c. 59, s. 1.

(c) **(Effective until January 1, 2009)** An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of three hundred fifty dollars ($350.00).

(c) **(Effective January 1, 2009)** An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules

G.S. 131E-138(c) is set out twice. See note.

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promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of four hundred dollars ($400.00).

(d) The Department shall renew the license in accordance with the rules of the Commission.

(e) Each license shall be issued only for the premises and persons named in the license and shall not be transferable or assignable except with the written approval of the Department.

(f) The license shall be posted in a conspicuous place on the licensed premises.

(g) The Commission shall adopt rules to ensure that a home care agency shall be deemed to meet the licensure requirements and issued a license without further review or inspection if: (i) the agency is already certified or accredited by the Joint Commission on Accreditation of Health Care Organizations, National League for Nursing, National Home Caring Council, North Carolina Accreditation Commission for In-Home Aide Services, or other entities recognized by the Commission and (ii) the agency is certified or accredited for all of the home care services that it provides; or (iii) in the case of continuing care retirement communities licensed by the North Carolina Department of Insurance under Article 64 of Chapter 58 which also have nursing beds licensed by the Department of Health and Human Services under Article 6 of Chapter 131E, the Department certifies, as part of its licensure review or survey of the nursing beds, that the facility also meets all of the rules and regulations adopted by the Commission pursuant to this Part. The Department may, at its discretion, determine the frequency and extent of the review and inspection of home health agencies already certified as meeting federal requirements, but not more frequently than on an annual basis for routine reviews. (1971, c. 539, s. 1; 1973, c. 476, s. 128; 1983, c. 775, s. 1; 1991, c. 59, s. 1; c. 761, s. 34; 1997-443, s. 11A.118(a); 2003-284, s. 34.4(a); 2005-276, s. 41.2(d); 2008-127, s. 2.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until January 1, 2009. The second version of subsection (c) set out above is effective January 1, 2009.

Effect of Amendments. — Session Laws 2008-127, s. 2, effective January 1, 2009, substituted “four hundred dollars ($400.00)” for “three hundred fifty dollars ($350.00)” in the last sentence of subsection (c).

ARTICLE 9.

Certificate of Need.

§ 131E-175. Findings of fact.

CASE NOTES

Cited in Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

§ 131E-176. Definitions.

CASE NOTES

"New Institutional Health Service". — Pursuant to G.S. 131E-176(16) and 131E-181(a), a certificate of need (CON) application could not be treated as an amendment to a prior CON because the application proposed doubling the size of a hospital facility and the approved capital expenditure of the prior CON, there was a change in ownership, and there was a change in location. Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

Because a certificate of need (CON) application proposed the relocation of two operating rooms and added a third, the CON application provided a new institutional health service under G.S. 131E-176(16)(u), which required the applicant to comply with the North Carolina State Medical Facilities Plan under G.S. 131E-176(16)(u) and 131E-183(a). Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

Applied in Mission Hosps., Inc. v. N.C. HHS, — N.C. App. —, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

§ 131E-178. Activities requiring certificate of need.

CASE NOTES

The Opening of Branch Office Outside an Existing Service Area. — When a hospice's competitor contested the issuance of a "no review" letter to the hospice allowing the hospice to establish a branch facility in the county where the competitor operated, which was not the county in which the hospice currently operated, the hospice was not entitled to summary judgment because the hospice's proposed branch was not within the hospice's current planning and service area, so the hospice was required to obtain a certificate of need, and the issuance of a "no review" letter to the hospice substantially prejudiced the competitor, as it resulted in the establishment and licensure of "a new institutional health service" in the competitor's service area without a prior determination of need. Hospice & Palliative Care Charlotte Region v. N.C. Dep't of Health, — N.C. App. —, 652 S.E.2d 348, 2007 N.C. App. LEXIS 2241 (2007).

Cited in Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

§ 131E-181. Nature of certificate of need.

CASE NOTES

Certificate of Need Required. — Pursuant to G.S. 131E-176(16) and G.S. 131E-181(a), a certificate of need (CON) application could not be treated as an amendment to a prior CON because the application proposed doubling the size of a hospital facility and the approved capital expenditure of the prior CON, there was a change in ownership, and there was a change in location. Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

§ 131E-182. Application.

Editor's Note. — Session Laws 2005-346, which amended subsection (a) of this section, in s. 10 provided that the amendments by Session Laws 2005-346, s. 8, would expire on the effective date of administrative rules adopted consistent with the provisions of this act regarding the number of gastrointestinal endoscopy procedures performed or projected to be performed. The applicable rules were initially adopted as a temporary rule effective February 1, 2006; the permanent rule was adopted effective November 1, 2006. See 10A NCAC 14C.3903.

CASE NOTES

Applied in Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

§ 131E-183. Review criteria.

CASE NOTES

Statutory Authority. — Request by the North Carolina Department of Health and Human Services for evidence from a certificate of need (CON) applicant explaining the vast difference in size and cost between a prior CON, a later proposal, and a still later CON application was within the agency's statutory authority under G.S. 131E-183(a)(4). Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

Statutory Criteria Not Met. — Because a certificate of need (CON) application proposed the relocation of two operating rooms and added a third, the CON application provided a new institutional health service under G.S. 131E-176(16)(u), which required the applicant to comply with the North Carolina State Medical Facilities Plan under G.S. 131E-176(16)(u) and G.S. 131E-183(a). However, the applicant was not entitled to a CON because the applicant failed to demonstrate that all of the CON review criteria were met. Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

Effect of Successive Certificate of Need Applications. —
When the North Carolina Department of Health and Human Resources, Division of Facility Services, Certificate of Need Section, denied a health system's request for a certificate of need (CON) to build a hospital and granted a CON to the system's competitor, competent evidence supported the agency's finding that, even though the system had previously been granted a CON for a different project, the system was not going to complete that project, and a requirement that the agency "consider" the previously granted CON did not require the agency to find that the system would successfully develop the previously approved project and factor a hypothetical completed hospital into the agency's determinations regarding the population to be served and the possibility of duplicative services. Good Hope Health Sys., LLC v. N.C. HHS, — N.C. App. —, 658 S.E.2d 665, 2008 N.C. App. LEXIS 79 (2008).

Administrative Law Judge's Finding That Rule "Void as Applied" to the Facts. — When the North Carolina Department of Health and Human Resources, Division of Facility Services, Certificate of Need Section, denied a health system's request for a certificate of need (CON) to build a hospital and granted a CON to the system's competitor, an administrative law judge was authorized to find that 10A N.C. Admin. Code 14C.2303(3), regarding findings of the utilization of computerized axial tomography equipment in a geographic area, was "void as applied" to the facts because the rule required consideration of the health system's underutilization of such equipment in a hospital that was about to close in determining whether to authorize the competitor to install such equipment in the hospital the competitor proposed for the area, and the system's underutilization was irrelevant to the area's need for such equipment, and G.S. 150B-33(b)(9)(3) allowed the administrative law judge to find that a rule was void in a particular case because the rule was not reasonably necessary to enable an agency to fulfill a duty delegated to the agency by the general assembly. Good Hope Health Sys., LLC v. N.C. HHS, — N.C. App. —, 658 S.E.2d 665, 2008 N.C. App. LEXIS 79 (2008).

§ 131E-184. Exemptions from review.

CASE NOTES

Cited in Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

§ 131E-185. Review process.

CASE NOTES

Sufficiency of the Evidence. — North Carolina Department of Health and Human Services did not err by denying a certificate of need (CON) application because, although there were arguments made at a public hearing in favor of the application, there was also evidence before the agency that many of those who spoke in favor of the proposed CON were unfamiliar with the relevant criteria, the CON application, or the CON review process. Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

§ 131E-188. Administrative and judicial review.

CASE NOTES

Time Limits Jurisdictional in Nature. — When a final agency decision was entered on the statutory deadline under G.S. 131E-188(a)(5), absent a decision that did not adopt the administrative law judge's (ALJ's) recommended decision, the ALJ's recommendation could have become de facto effective thereafter as the applicable time limits established in the North Carolina certificate of need law were jurisdictional in nature. Mission Hosps., Inc. v. N.C. HHS, — N.C. App. —, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

To What Court Appeals May Be Taken. —

When a competitor contested the issuance of a "no review" letter to a hospice, which allowed the hospice to establish a branch in the competitor's service area, and the North Carolina Department of Health and Human Services, Division of Facility Services, ordered the withdrawal of the "no review" letter, the Court of Appeals had jurisdiction, under G.S. 131E-188(b), to hear the hospice's appeal because a prior panel of the Court of Appeals held that the issuance of a "no review" letter was an "exemption" under G.S. 131E-188(a), and that holding was binding. Hospice & Palliative Care Charlotte Region v. N.C. Dep't of Health, — N.C. App. —, 652 S.E.2d 348, 2007 N.C. App. LEXIS 2241 (2007).

§ 131E-189. Withdrawal of a certificate of need.

CASE NOTES

Cited in Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

ARTICLE 11A.

Medical Care Data.

§ 131E-214.1. Definitions.

As used in this Article:

(1) "Division" means the Division of Health Service Regulation of the Department of Health and Human Services.

(2) "Freestanding ambulatory surgical facility" means a facility licensed under Part D of Article 6 of this Chapter.

(3) "Hospital" means a facility licensed under Article 5 of this Chapter or Article 2 of Chapter 122C of the General Statutes, but does not include the following:

   a. A facility with all of its beds designated for medical type "LTC" (long-term care).

b. A facility with the majority of its beds designated for medical type "PSY-3" (mental retardation).

c. A facility operated by the North Carolina Department of Correction.

(4) **(Effective until January 1, 2010)** "Patient data" means data that includes a patient's age, sex, zip code, third-party coverage, principal and other diagnosis, date of admission, procedure and discharge date, principal and other procedures, total charges and components of the total charges, attending physician identification number, and hospital or freestanding ambulatory surgical facility identification number.

(4) **(Effective January 1, 2010)** "Patient data" means data that includes a patient's age, sex, race, ethnicity, zip code, third-party coverage, principal and other diagnosis, date of admission, procedure and discharge date, principal and other procedures, total charges and components of the total charges, attending physician identification number, and hospital or freestanding ambulatory surgical facility identification number.

(5) "Patient identifying information" means the name, address, social security number, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a health care provider if that number does not consist of or contain numbers, including social security or drivers license numbers, that could be used to identify a patient with reasonable accuracy and speed from sources external to the health care provider.

(6) "Statewide data processor" means a data processor certified by the Division as capable of complying with the requirements of G.S. 131E-214.4. The Division may deny, suspend, or revoke a certificate, in accordance with Chapter 150B of the General Statutes, if the statewide data processor does not comply with or is not capable of complying with the requirements of G.S. 131E-214.4. The Division is authorized to promulgate rules concerning the receipt, consideration, and limitation of a certificate applied for or issued under this Article. (1995, c. 517, s. 39(b); 1997-443, s. 11A.118(a); 2007-182, s. 1; 2008-119, s. 2.)

Subdivision (4) Set Out Twice. — The first version of subdivision (4) set out above is effective until January 1, 2010. The second version of subdivision (4) set out above is effective January 1, 2010.

Effect of Amendments. —

Session Laws 2008-119, s. 2, effective January 1, 2010, inserted "race, ethnicity" in subdivision (4).

ARTICLE 13.

Temporary Management of Long-Term Care Facilities.

§ 131E-231. Definitions.

As used in this Article, unless otherwise specified:

(1) "Long-term care facility" means a nursing home as defined in G.S. 131E-101(6) and an adult care home as defined in G.S.131D-2(a)(1b) or G.S. 131E-101(4).

(2) "Resident" means a person who has been admitted to a long-term care facility.

(3) "Respondent" means the person or entity holding a license pursuant to G.S. 131E-102 or G.S. 131D-2 or a person or entity operating a long-term care facility subject to licensure without a license. (1993, c. 390, s. 1; 1995, c. 535, s. 26; 2008-187, s. 38(b).)

Effect of Amendments. — Session Laws 2008-187, s. 38(b), effective August 7, 2008, substituted "G.S 131D-2(a)(1b) or G.S. 131E-101(4)" for "G.S. 131D-2(a)(3) or G.S. 131E-101(4)" in subdivision (1).

ARTICLE 16.

Miscellaneous Provisions.

§ 131E-267. Fees for departmental review of licensed health care facility or Medical Care Commission bond-financed construction projects.

(a) The Department of Health and Human Services shall charge a fee for the review of each health care facility construction project to ensure that project plans and construction are in compliance with State law. The fee shall be charged on a one-time, per-project basis as provided in this section. In no event may a fee imposed under this section exceed two hundred thousand dollars ($200,000) for any single project. The first seven hundred twelve thousand six hundred twenty-six dollars ($712,626) in fees collected under this section shall remain in the Division of Health Service Regulation. Additional fees collected shall be credited to the General Fund as nontax revenue and are intended to offset rather than replace appropriations made for this purpose.

(b) The fee imposed for the review of a hospital construction project varies depending upon the square footage of the project:

Over	Up To	Project Fee
0	5,000	$1,500 plus $0.25 per square foot
5,000	10,000	$3,000 plus $0.25 per square foot
10,000	20,000	$4,500 plus $0.45 per square foot
20,000	NA	$6,000 plus $0.45 per square foot

(c) The fee imposed for the review of a nursing home construction project varies depending upon the square footage of the project:

Over	Up To	Project Fee
0	2,000	$250.00 plus $0.15 per square foot
2,000	NA	$500.00 plus $0.25 per square foot

(d) The fee imposed for the review of an ambulatory surgical facility construction project varies depending upon the square footage of the project:

Over	Up To	Project Fee
0	2,000	$200.00 plus $0.15 per square foot
2,000	NA	$400.00 plus $0.25 per square foot

(e) The fee imposed for the review of a psychiatric hospital construction project varies depending upon the square footage of the project:

Over	Up To	Project Fee
0	5,000	$750.00 plus $0.25 per square foot

Over	Up To	Project Fee
5,000	10,000	$1,500.00 plus $0.25 per square foot
10,000	20,000	$2,250.00 plus $0.45 per square foot
20,000	NA	$3,000.00 plus $0.45 per square foot

(f) The fee imposed for the review of an adult care home construction project varies depending upon the square footage of the project:

Over	Up To	Project Fee
-0-	2,000	$175.00 plus $0.10 per square foot
2,000	NA	$350.00 plus $0.20 per square foot

(g) The fee imposed for the review of the following residential construction projects is:

Residential Project	Project Fee
Family Care Homes	$225.00 flat fee
ICF/MR Group Homes	$350.00 flat fee
Group Homes: 1-3 beds	$125.00 flat fee
Group Homes: 4-6 beds	$225.00 flat fee
Group Homes: 7-9 beds	$275.00 flat fee
Other residential:	
More than 9 beds	$275.00 plus $0.15 per square foot of project space.

(2003-284, s. 34.11(a); 2005-276, s. 41.2(j); 2006-66, s. 10.22; 2007-323, s. 30.5(a); 2008-107, s. 29.5(a).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 29.5(a), effective July 20, 2008, rewrote the section.

Chapter 132.

Public Records.

Sec.
132-1.12. Limited access to identifying information of minors participating in local government parks and recreation programs.

§ 132-1. "Public records" defined.

CASE NOTES

Cited in Cunningham v. Cannon, — N.C. App. —, 654 S.E.2d 24, 2007 N.C. App. LEXIS 2529 (2007).

§ 132-1.10. Social security numbers and other personal identifying information.

CASE NOTES

Exemption for Court Orders. — The trial court did not abuse its discretion because its order compelling discovery of an employee's social security number fell squarely within the exemption for court orders in both G.S. 132-1.10, and the original Federal Privacy Act of 1974. The trial court took measures to minimize the potential loss of privacy resulting from the disclosure of the social security number, requiring that all records be purged upon the completion of the lawsuit pursuant to G.S. 1A-1, N.C. R. Civ. P. 26(c). Fulmore v. Howell, — N.C. App. —, 657 S.E.2d 437, 2008 N.C. App. LEXIS 429 (2008).

§ 132-1.12. Limited access to identifying information of minors participating in local government parks and recreation programs.

(a) A public record, as defined by G.S. 132-1, does not include, as to any minor participating in a park or recreation program sponsored by a local government or combination of local governments, any of the following information as to that minor participant: (i) name, (ii) address, (iii) age, (iv) date of birth, (v) telephone number, (vi) the name or address of that minor participant's parent or legal guardian, or (vii) any other identifying information on an application to participate in such program or other records related to that program.

(b) The county, municipality, and zip code of residence of each participating minor covered by subsection (a) of this section is a public record, with the information listed in subsection (a) of this section redacted.

(c) Nothing in this section makes the information listed in subsection (a) of this section confidential information. (2008-126, s. 1.)

Editor's Note. — Session Laws 2008-126, s. 2, made this section effective July 28, 2008.

§ 132-9. Access to records.

CASE NOTES

Cited in In re Summons Issued to Ernst & Young, LLP, — N.C. App. —, 663 S.E.2d 921, 2008 N.C. App. LEXIS 1472 (Aug. 5, 2008).

Chapter 135.

Retirement System for Teachers and State Employees; Social Security; Health Insurance Program for Children.

Article 1.

Retirement System for Teachers and State Employees.

Sec.
135-5. Benefits.

Article 2.

Coverage of Governmental Employees under Title II of the Social Security Act.

135-27. Transfers from State to certain association service.

Article 3.

Other Teacher, Employee Benefits; Child Health Benefits.

135-37 through 135-42.1. [Recodified.]

Article 3A.

Other Benefits for Teachers, State Employees, Retired State Employees, and Child Health.

Part 1. General Provisions.

135-43. Confidentiality of information and medical records; provider contracts.
135-43.1. Committee on Employee Hospital and Medical Benefits.
135-43.2. State Health Plan Administrative Commission.
135-43.3. Oversight team.
135-43.4. Committee on Actuarial Valuation of Retired Employees' Health Benefits.
135-43.5. Auditing of the Plan.
135-43.6. Reports to the General Assembly.
135-43.7. Contract disputes not contested case under the Administrative Procedure Act, Chapter 150B of the General Statutes.

Part 2. Administrative Structure.

135-44. Board of Trustees established.
135-44.1. Officers, quorum, meetings.
135-44.2. Executive Administrator.
135-44.3. Meaning of "Executive Administrator and Board of Trustees".
135-44.4. Powers and duties of the Executive Administrator and Board of Trustees.
135-44.5. Health benefit trust funds created.
135-44.6. Premiums set.
Sec.
135-44.7. Administrative review.
135-44.8. Rules.

Part 3. State Health Plan for Teachers and State Employees.

135-45. Undertaking.
135-45.1. General definitions.
135-45.2. Eligibility.
135-45.3. Enrollment.
135-45.4. Effective dates of coverage.
135-45.5. Optional participation for charter schools operated by private nonprofit corporations.
135-45.6. Benefits not subject to deductible or coinsurance.
135-45.7. Prior approval procedures.
135-45.8. General limitations and exclusions.
135-45.9. Special provisions for chemical dependency and mental health benefits.
135-45.10. Persons eligible for Medicare; optional participation in other Medicare products.
135-45.11. Cost-savings initiatives and incentive programs authorized.
135-45.12. Cessation of coverage.
135-45.13. Conversion.
135-45.14. Coordination of benefits.
135-45.15. Liability of third person; right of subrogation; right of first recovery.
135-45.16. Right to amend.

Part 4. Long-Term Care Benefits.

135-46. Undertaking.
135-46.1. Long-term care benefits.
135-46.2. Conversion.
135-46.3. Right to alter, amend, or repeal.

Part 5. Health Insurance Program for Children.

135-47. (Repealed effective July 1, 2010) Administration and processing of Program claims.
135-47.1. Right to alter, amend, or repeal.
135-47.2. Child health insurance fund.
135-47.3. Data reporting.
135-48, 135-49. [Reserved.]

Article 4.

Consolidated Judicial Retirement Act.

135-50. Short title and purpose.
135-51. Scope.

Sec.
135-53. Definitions.
135-54. Name and date of establishment.
135-55. Membership.
135-56. Creditable service.
135-58. Service retirement benefits.
135-65. Post-retirement increases in allowances.

Article 5.

Supplemental Retirement Income Act of 1984.

Sec.
135-91. Administration.
135-96. (Effective July 1, 2009) Supplemental Retirement Board of Trustees.

ARTICLE 1.

Retirement System for Teachers and State Employees.

§ 135-3. Membership.

CASE NOTES

Cited in Stone v. State, — N.C. App. —, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (Aug. 5, 2008).

§ 135-4. Creditable service.

CASE NOTES

Cited in Stone v. State, — N.C. App. —, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (Aug. 5, 2008).

§ 135-5. Benefits.

(a) Service Retirement Benefits. —

(1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of membership service or shall have completed 30 years of creditable service.

(2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.

(3) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

(4) Any member who is a law-enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; Provided, also, any member who has met the conditions herein required but does not retire, and later becomes a teacher or an

employee other than as a law-enforcement officer shall continue to have the right to commence retirement.

(5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section. Any member who has made written application for long-term or extended short-term benefits under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106, and who has been rejected by the Plan's Medical Board for a long-term or extended short-term benefit shall have 90 days from the date of notification of the rejection to convert his application to an early or service retirement application, provided that the member meets the eligibility requirements, effective the first day of the month following the month in which short-term disability benefits ended or the first day of the month following the month in which any salary continuation as may be provided in G.S. 135-104 ended, whichever is later.

(a1) Early Service Retirement Benefits. — Any member may retire and receive a reduced retirement allowance upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service.

(b) Service Retirement Allowances of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier age, computed on the basis of contributions made prior to such earlier age; and

(3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the sum of:

  a. The annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of six and twenty-five hundredths per centum (6.25%) of his compensation; and

  b. The pension which would have been provided on account of such contributions at age 65, or at his retirement age, whichever is the earlier age.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars ($70.00) per month; provided that the computation shall be made prior to any reduction resulting from the selection of an optional allowance as provided by subsection (g) of this section.

(b1) Service Retirement Allowances of Members Retiring on or after July 1, 1963, but prior to July 1, 1967. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, but prior to July 1, 1967, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars ($4,800) plus one and one-half percent (1½%) of the portion of such compensation in excess of

forty-eight hundred dollars ($4,800), multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.

(2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b2) Service Retirement Allowance of Members Retiring on or after July 1, 1967, but prior to July 1, 1969. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b3) Service Retirement Allowances of Members Retiring on or after July 1, 1969, but prior to July 1, 1973. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1969, but prior to July 1, 1973, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) If the member's service retirement date occurs before his sixty-second birthday but on or after his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-second birthday.

(4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b4) Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1975. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1975, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of five thousand six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of five thousand six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b5) Service Retirement Allowance of Members Retiring on or after July 1, 1975, but prior to July 1, 1977. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1975, but prior to July 1, 1977, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-half percent (1½%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b6) Service Retirement Allowance of Members Retiring on or after July 1, 1977, but prior to July 1, 1980. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1977, but prior to July 1, 1980, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the

completion of 30 years of creditable service, such allowance shall be equal to one and fifty-five one hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b7) Service Retirement Allowance of Members Retiring on or after July 1, 1980, but prior to July 1, 1985. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1980, but prior to July 1, 1985, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2) above.

(4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b8) Service Retirement Allowance of Law-Enforcement Officers Retiring on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985]. — Upon retirement from service, in accordance with subsection (a) of this section, on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985], a member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

(1) A member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
  b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in a. above, but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(2) A member who is not a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 65th birthday or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and fifty-eight hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
  b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 or more years of creditable service, his retirement allowance shall be computed as in a. above but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
  c. If the member's service retirement date occurs before his 60th birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in b. above.
  d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
  b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
  b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989, but before July 1, 1990. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.
  b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.
  b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990, but before July 1, 1992. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, but before July 1, 1992, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.
  b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.
  b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b13) Service Retirement Allowance of Members Retiring on or after July 1, 1992, but before July 1, 1993. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1993, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.
  b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.
  b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b., c., and d.

(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1993, but before July 1, 1994. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1993, but before July 1, 1994, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, the allowance shall be computed as in G.S. 135-5(b14)(1)a., but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to the completion of 25 years or more of creditable service, the retirement allowance shall be computed as in G.S. 135-5(b14)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's service retirement date occurs before his 60th birthday and prior to the completion of 30 or more years of creditable service, the service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b14)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1994, but before July 1, 1995. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b15)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b15)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance provided by G.S. 135-5(b14)(2)c.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b16) Service Retirement Allowance of Members Retiring on or After July 1, 1995, but Before July 1, 1997. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, but before July 1, 1997, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

  a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of his creditable service.

  b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

    1. The service retirement allowance payable under G.S. 135-5(b16)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

    2. The service retirement allowance as computed under G.S. 135-5(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

  a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of creditable service.

  b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b16)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

  c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

    1. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th

birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b16)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b17) Service Retirement Allowance of Members Retiring on or After July 1, 1997, but Before July 1, 2000. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1997, but before July 1, 2000, a member shall receive the following service retirement allowance.

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty hundredths percent (1.80%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b17)(1)a, reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b17)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty hundredths percent (1.80%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b17)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b17)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b17)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b17)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b18) Service Retirement Allowance of Members Retiring on or After July 1, 2000, but Before July 1, 2002. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2000, but before July 1, 2002, a member shall receive the following service retirement allowance.

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b18)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b18)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

  a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of creditable service.

  b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b18)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

  c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

    1. The service retirement allowance as computed under G.S. 135-5(b18)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

    2. The service retirement allowance as computed under G.S. 135-5(b18)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

    3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b18)(2)b.

  d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b19) Service Retirement Allowance of Members Retiring on or After July 1, 2002. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2002, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

  a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
    1. The service retirement allowance payable under G.S. 135-5(b19)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
    2. The service retirement allowance as computed under G.S. 135-5(b19)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b19)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
    1. The service retirement allowance as computed under G.S. 135-5(b19)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
    2. The service retirement allowance as computed under G.S. 135-5(b19)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
    3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b19)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(c) Disability Retirement Benefits of Members Leaving Service Prior to January 1, 1988. — The provisions of this subsection shall not be applicable to members in service on or after January 1, 1988. Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

(1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or

(2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law-enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a fifty percent (50%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

(1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and

(2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(d) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;

(2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars ($70.00) per month; provided, that the computation shall be made prior to any reduction resulting from an optional allowance as provided by subsection (g) of this section.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963, but prior to July 1, 1969. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent to the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age of 65 years; otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.

(2) Notwithstanding the foregoing provisions,

a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 135-5(d2);

b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and

c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982, Who Left Service prior to January 1, 1988. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member who left service prior to January 1, 1988 shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired for Disability. — The provisions of this subsection shall be applicable to members retired on a disability retirement allowance and shall not be applicable to members in service on or after January 1, 1988. Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the Board of Trustees.

(1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months of service in the final 48 months prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall

equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability and his age at the time of conversion to service retirement. This election is irrevocable. Provided, the provisions of this subdivision shall not apply to beneficiaries of the Law-Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

(2) Should a disability beneficiary under the age of 60 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability; provided that, on and after July 1, 1971, if a disability beneficiary under the age of 62 years is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and, in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.

(3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance described in a. below reduced by the amount in b. below:

a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.

b. The actuarial equivalent of the retirement benefits he previously received.

(3a) Notwithstanding the foregoing, should a beneficiary who retired on a disability retirement allowance be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members. Upon the subsequent retirement of the beneficiary, he shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.

(4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 135-5(d), (d1),(d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees. The benefit payable to a beneficiary who does not or refuses to provide the information requested within 60 days after such request shall not be paid a benefit until the information so requested is provided, and should such refusal or failure to provide such information continue for 240 days after such request, the right of a beneficiary to a benefit under the Article may be terminated.

The Director of the State Retirement System shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

(5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law-Enforcement Officers' Retirement System at the time of the transfer of law-enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law-Enforcement Officers' Retirement System and becomes employed as an employee other than as a law-enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this subsection. Any beneficiary as hereinbefore described who becomes employed as a law-enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this subsection.

(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on

account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.

(f) Return of Accumulated Contributions. — Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 135-4, and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

A member who is a participant or beneficiary of the Disability Income Plan of North Carolina as is provided in Article 6 of this Chapter shall not be paid a return of accumulated contributions, notwithstanding the member's status as an employee or teacher. Notwithstanding any other provision of law to the contrary, a member who is a beneficiary of the Disability Income Plan of North Carolina as provided in Article 6 of this Chapter and who is receiving disability benefits under the transition provisions as provided in G.S. 135-112, shall not be prohibited from receiving a return of accumulated contributions as provided in this subsection.

(f1) Expired.

(g) Election of Optional Allowance. — With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance, including any special retirement allowance, in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2 or

Option 3 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may request to nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage, and may nominate a new spouse to receive the retirement allowance under the previously elected option by written designation duly acknowledged and filed with the Board of Trustees within 120 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Options 2, 3, or 6 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

Option 1.(a) In the Case of a Member Who Retires prior to July 1, 1963. — If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963, but prior to July 1, 1993. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit.

Option 5. For Members Retiring Prior to July 1, 1993. — The member may elect to receive a reduced retirement allowance under the conditions of Option 2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option 6. A member may elect either Option 2 or Option 3 with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event a retiree purchases creditable service as provided in G.S. 135-4, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

(h) Computation of Benefits Payable Prior or Subsequent to July 1, 1947. — Prior to July 1, 1947, all benefits payable as of February 22, 1945, shall be computed on the basis of the provisions of Chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the Board of Trustees may adopt, the provisions of this Article as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserve between the funds of the Retirement System as may be required by the provisions of this subsection.

(i) Restoration to Service of Certain Former Members. — If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this Chapter to the contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947.

(j) Notwithstanding anything herein to the contrary, effective July 1, 1959, the following provisions shall apply with respect to any retirement allowance payments due after such date to any retired member who was retired prior to July 1, 1959, on a service or disability retirement allowance:

(1) If such retired member has not made an election of an optional allowance in accordance with G.S. 135-5(g), the monthly retirement allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable, increased by fifteen percent (15%) thereof, or by fifteen dollars ($15.00), whichever is the lesser; provided that, if such member had rendered not less than 20 years of creditable service, the retirement allowance payable to him from and after July 1, 1959, shall be not less than seventy dollars ($70.00) per month.

(2) If such retired member has made an effective election of an optional allowance, the allowance payable to him from and after July 1, 1959,

shall be equal to the allowance previously payable under such election plus an increase which shall be computed in accordance with (1) above as if he had not made such an election; provided that such increase shall be payable only during the retired member's remaining life and no portion of such increase shall become payable to the beneficiary designated under the election.

(k) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. — From and after July 1, 1967, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
and so on concluding with	
Year 1942	29%

The minimum increase pursuant to this subsection (k) shall be ten dollars ($10.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to the retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(*l*) Death Benefit Plan. — There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

(1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or

(2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3), (4) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2.

subject to a minimum of twenty-five thousand dollars ($25,000) and to a maximum of fifty thousand dollars ($50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection (*l*) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

(1) After December 31, 1968 and after he has attained age 70; or
(2) After December 31, 1969 and after he has attained age 69; or
(3) After December 31, 1970 and after he has attained age 68; or
(4) After December 31, 1971 and after he has attained age 67; or
(5) After December 31, 1972 and after he has attained age 66; or
(6) After December 31, 1973 and after he has attained age 65; or
(7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

(1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
(2) Last day of actual service shall be:
    a. When employment has been terminated, the last day the member actually worked.
    b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).
(3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).
(4) A member on leave of absence from his position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars ($25,000) nor to exceed fifty thousand dollars ($50,000).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter, or a member who is in receipt of Workers' Compensation during the period for which he or she would have otherwise been eligible to receive short-term benefits as provided in G.S. 135-105 and dies on or after 181 days from the last day of his or her actual service but prior to the date the benefits as provided in G.S. 135-105 would have ended, shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2004, but before July 1, 2007, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars ($9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2007, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars ($10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(*l*1) Reciprocity of Death Benefit Plan. — Only for the purpose of determining eligibility for the death benefit provided for in subsection (*l*) of this section, membership service standing to the credit of a member of the Legislative Retirement System or the Consolidated Judicial Retirement System shall be added to the membership service standing to the credit of a member of the Teachers' and State Employees' Retirement System. However, in the event that a participant or beneficiary is a retired member of the Legislative Retirement System or the Consolidated Judicial Retirement System whose retirement benefit was suspended upon entrance into membership in the Teachers' and State Employees' Retirement System, such membership service standing to the credit of the retired member prior to retirement shall be likewise counted. Membership service under this section shall not be counted twice for the same period of time. In no event shall a death benefit provided for in G.S. 135-5(*l*) be paid if a death benefit is paid under G.S. 135-63.

(m) Survivor's Alternate Benefit. — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that the following conditions apply:

(1)a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance,

b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b19)(1)b. or G.S. 135-5(b19)(2)c., notwithstanding the requirement of obtaining age 50, or

c. The member had not commenced to receive a retirement allowance as provided under this Chapter.

(2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who was living at the time of his death.

(3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (*l*) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term "in service" as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter.

Notwithstanding the foregoing, a member who is in receipt of Workers' Compensation during the period for which the member would have otherwise been eligible to receive short-term benefits, as provided in G.S. 135-105, and who dies on or after 181 days from the last day of the member's actual service but on or before the date the benefits as provided in G.S. 135-105 would have ended, shall be considered in service at the time of the member's death for the purpose of this benefit.

(m1) Special Retirement Allowance for Law Enforcement Officers. — Upon retirement, a member who is a law enforcement officer may elect to transfer his eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina to this Retirement System and receive, in addition to his basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon his eligible accumulated account balance at the date of the transfer of the assets to this System. For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of mortality tables, such other tables as may be necessary and the interest assumption rate recommended by the actuary based upon actual experience including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based upon the five year experience study as required by G.S. 135-6(n). Provided, however, a member, who transfers his eligible accumulated contributions from the Supplemental Retirement Income Plan of North Carolina, shall be taxed for North Carolina State Income tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the Supplemental Retirement Income Plan of North Carolina. The Teachers' and State Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

(n) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(o) Post-Retirement Increases in Allowances. — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971 as follows:

Increase In Index	*Increase In Allowance*
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum, but not more than four per centum (4%); provided that any such increase in allowances shall become effective only if the additional liabilities on account of such increase do not require an increase in the total employer rate of contributions.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

Notwithstanding the above paragraphs, retired members and beneficiaries may receive cost-of-living increases in retirement allowances if active members of the system receive across-the-board cost-of-living salary increases. Such increases in post-retirement allowances shall be comparable to cost-of-living salary increases for active members in light of the differences between the statutory payroll deductions for State retirement contributions, Social Security taxes, State income withholding taxes, and federal income withholding taxes required of each group. The increases for retired members shall include the cost-of-living increases provided in this section. The cost-of-living increases allowed retired and active members of the system shall be comparable when each group receives an increase that has the same relative impact upon the net disposable income of each group.

(p) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967. — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1963, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1963 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971, have been increased to the extent provided for in the preceding subsection (o).

(q) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1970. — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1970, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Year(s) in Which Benefits Commenced	*Percentage*
1969	1
1968	4
1967	6
1965 through 1966	9
1964	12
1963	14
1959 through 1962	17
1942 through 1958	22

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (o).

(r) Notwithstanding anything herein to the contrary, effective July 1, 1973, any member who retired after attaining the age of 60 with 15 or more years of creditable service shall receive a monthly benefit of no less than seventy-five dollars ($75.00) prior to the application of any optional benefit.

(s) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (o).

(t) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(u) Repealed by Session Laws 1975, c. 875, s. 47.

(v) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 135-5(o) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System unless the 1975 Session of the General Assembly provides an appropriation to fund this provision.

(x) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1976, which shall become payable on July 1, 1977, and to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2½%) for the years beginning July 1, 1977, and July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(z) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1975. — From and after July 1, 1977, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1975, shall be increased by seven percent (7%) thereof. This increase shall be calculated before monthly retirement allowances as of July 1, 1977, have been increased to the extent provided for in the preceding subsection (o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(aa) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional one percent (1%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(bb) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional three percent (3%) computed on the retirement allowance prior to any increase authorized by paragraph (cc) of this section. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(cc) Increases in Benefits to Those Persons Who Were Retired Prior to July 1, 1977. — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1977, shall be increased by a percentage in accordance with the following schedule:

Period in Which Benefits Commenced	*Percentage*
On or before June 30, 1963	10%
July 1, 1963, to June 30, 1968	7%
July 1, 1968, to June 30, 1977	2%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(dd) From and after July 1, 1981, the retirement allowance to or on account of the beneficiaries whose retirement commenced prior to July 1, 1980, shall be increased by three percent (3%). These increases shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (ee) of this section.

(ee) Adjustment in Allowances Paid Beneficiaries Whose Retirement Commenced Prior to July 1, 1980. — From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced prior to July 1, 1980, shall be adjusted by an increase of one and three-tenths percent (1.3%). This adjustment shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (dd) of this section.

(ff) From and after July 1, 1982, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1981, shall be increased by one-tenth of one percent (0.1%) of the allowance payable on July 1, 1981.

(gg) From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by two and one-half percent (2.5%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (o) of this section, plus an additional one and one-half percent (1.5%) of the allowance payable on July 1, 1982, in order to supplement the increase payable in accordance with subsection (o) of this section.

(hh) Notwithstanding any other provision of this Chapter, from and after July 1, 1983, the retirement allowance payable to each teacher and State employee, who retired prior to July 1, 1973, and who is in receipt of a reduced retirement allowance based upon 30 or more years of contributing membership service, shall be increased by the elimination of the reduction factors applicable at the time of their retirement under G.S. 135-3(8) or G.S. 135-5(b3). The provisions of this subsection shall apply equally to the allowance of a surviving annuitant of a beneficiary.

(ii) From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1983, in accordance with G.S. 135-5(o), plus an additional four and two-tenths percent (4.2%) of the allowance payable on July 1, 1983.

(jj) Increase in Allowance Where Retirement Commenced on or before July 1, 1984, or after that Date, but before June 30, 1985. — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(kk) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1985. — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable under subsection (o) of this section or otherwise granted by act of the 1985 Session of the General Assembly.

(*ll*) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985, and June 30, 1986.

(mm) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(nn) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(oo) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988. — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(pp) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(qq) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. — From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1989 Session of the General Assembly.

(rr) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(ss) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(tt) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1992. — From and after July 1, 1992, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1992, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 1992. This allowance shall be calculated on the allowance payable and in effect on June 30, 1992, so as not to be compounded on any other increase granted by act of the 1991 Session of the General Assembly, 1992 Regular Session.

(uu) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(vv) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1993. — From and after July 1, 1993, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1993, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1993. This allowance shall be calculated on the allowance payable and in effect on June 30, 1993, so as not to be compounded on any other increase granted by act of the 1993 General Assembly.

(ww) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on

July 1, 1992, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(xx) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994. — From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase granted by act of the 1993 General Assembly, 1994 Regular Session.

(yy) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(zz) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(aaa) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995. — From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase granted by act of the 1995 General Assembly.

(bbb) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 135-5(o). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(ccc) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(ddd) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1997. — From and after July 1, 1997, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1997, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 1997. This allowance shall be calculated on the allowance payable and in effect on June 30, 1997, so as not to be compounded on any other increase granted by act of the 1997 General Assembly.

(eee) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(fff) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(ggg) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2000. — From and after July 1, 2000, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2000, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 2000. This allowance shall be calculated on the allowance payable and in effect on June 30, 2000, so as not to be compounded on any other increase granted by act of the 1999 General Assembly, 2000 Regular Session.

(hhh) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 2000, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000.

(iii) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2000, and June 30, 2001.

(jjj) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2001, and June 30, 2002.

(kkk) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2002. — From and after July 1, 2002, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2002, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 2002. This allowance shall be calculated on the allowance payable and in effect on June 30, 2002, so as not to be compounded on any other increase granted by act of the 2002 Regular Session of the 2001 General Assembly.

(*lll*) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2002, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2002, and June 30, 2003.

(mmm) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2003, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2003, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2003, and June 30, 2004.

(nnn) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005.

(ooo) From and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2005, shall be increased by three percent (3%) of the allowance payable on June 1, 2006, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2005, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2005, and June 30, 2006.

(ppp) Repealed by Session Laws 2007-431, s. 7, effective July 1, 2007.

(qqq) From and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2006, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2007, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2006, but before June 30, 2007, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2006, and June 30, 2007.

(rrr) From and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2007, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2008, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2007, but before June 30, 2008, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2007, and June 30, 2008. (1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5; 1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8; 1959, c. 490; c. 513, ss. 2, 3; c. 620, ss. 1-3; c. 624; 1961, c. 516, s. 4; c. 779, s. 1; 1963, c. 687, s. 3; 1965, c. 780, s. 1; 1967, c. 720, ss. 4-10; c. 1223; 1969, c. 1223, ss. 2, 5-12; 1971, c. 117, ss. 11-15; c. 118, ss. 3-7; 1973, c. 241, ss. 3-7; c. 242, ss. 2-4; c. 737, s. 2; c. 816, s. 2; c. 994, ss. 1, 3; c. 1312, ss. 1-3; 1975, c. 457, ss. 2-4; c. 511, ss. 1, 2; c. 634, ss. 1, 2; c. 875, s. 47; 1977, c. 561; c. 802, ss. 50.65-50.70; 1979, c. 838, s. 99; c. 862, ss. 1, 4, 5; c. 972, s. 4; c. 975, s. 1; 1979, 2nd Sess., c. 1137, ss. 63, 64, 66; c. 1196, s. 1; c. 1216; 1981, c. 672, s. 1; c. 689, s. 2; c. 859, ss. 42, 42.1, 44; c. 940, s. 1; c. 975, s. 3; c. 978, ss. 1, 2; c. 980, ss. 3, 4; 1981 (Reg. Sess., 1982), c. 1282, s. 11; 1983, c. 467; c. 761, ss. 218, 219, 228, 229; c. 902, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1034, ss. 222, 232-235, 237; c. 1049, ss. 1-3; 1985, c. 348, s. 2; c. 479, ss. 189(a), 190, 191, 192(a), 194; c. 520, s. 2; c. 649, ss. 8, 10; 1985 (Reg. Sess., 1986), c. 1014, s. 49(a); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(a), 29(c)-(j), 37(a); c. 824, s. 3; 1987 (Reg. Sess., 1988), c. 1061, s. 1; c. 1086, s. 22(a); c. 1108, s. 1; c. 1110, ss. 1-3; 1989, c. 717, ss. 1-6; c. 731, s. 1; c. 752, s. 41(a); c. 770, s. 31; c. 792, ss. 3.1-3.3; 1989 (Reg. Sess., 1990), c. 1077, ss. 2-5; 1991 (Reg. Sess., 1992), c. 766, s. 2; c. 900, ss. 52(a)-(c), 53(b); 1993, c. 321, ss. 74(c)-(e), 74.1(e), (f), 74.2(a); c. 531, s. 5; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(g)-(j), (m), (r); 1995, c. 507, ss. 7.22(a), 7.23(a), (b), 7.23A(a), (b); c. 509, ss. 74, 75; 1996, 2nd Ex. Sess., c. 18, s. 28.21(a); 1997-443, s. 33.22(a)-(d); 1998-153, s. 21(a); 1998-212, ss. 28.26(c), 28.27(a); 1999-237, s. 28.23(a); 2000-67, ss. 26.20(a)-(d); 2001-424, s. 32.22(a); 2002-126, ss. 28.8(a), 28.9(a)-(d); 2003-284, s. 30.17(a); 2003-359, ss. 3-6, 11; 2004-124, s. 31.17(a); 2004-147, s. 1; 2005-91, ss. 2, 3; 2005-276, s. 29.25(a); 2006-66, s. 22.18(a); 2006-172, s. 1; 2007-323, s. 28.20(a); 2007-384, ss. 10.3, 10.4; 2007-431, ss. 1, 5, 7, 12, 13; 2007-496, s. 1; 2008-107, s. 26.23(a).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 26.23(a), effective July 1, 2008, added subsection (rrr).

CASE NOTES

Employee's Retirement Benefits Did Not Vest Prior to Statute's Amendment. — State employee's G.S. 135-5(d4) claim failed as the employee's retirement benefits did not vest before the North Carolina legislature adopted a new policy under which disabled workers received disability benefits in lieu of retirement, which were offset by any payments received in the form of Social Security benefits. Whisnant v. Teachers' & State Emples. Ret. Sys., — N.C. App. —, 662 S.E.2d 573, 2008 N.C. App. LEXIS 1187 (July 1, 2008).

§ 135-6. Administration.

CASE NOTES

Board had Power to Waive Penalties. — Board's practice of waiving penalties under circumstances where employers were not at fault for failing to remit employer contributions to the Retirement System was entirely consistent with the Board's statutory discretion to adopt rules to prevent injustices under G.S. 135-6(f). Accordingly, the Treasurer and the Board were not required by G.S. 135-8(f)(3) to punish those employers whose employer contributions were not deposited in the Retirement System. Stone v. State, — N.C. App. —, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (Aug. 5, 2008).

Actuarially Sound Manner is a Term in State Employees' Retirement Contract. — Because state employees had a contractual right to the funding of the Retirement System in an actuarially sound manner, under G.S. 135-6(i) and (m)-(o), the right to have the Retirement System funded in an actuarially sound manner was a term or condition included in the employees' retirement contracts. Stone v. State, — N.C. App. —, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (Aug. 5, 2008).

Role of Actuary. — G.S. 135-6(m)-(o) envision an active role for an actuary in the state employees' Retirement System. Stone v. State, — N.C. App. —, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (Aug. 5, 2008).

§ 135-8. Method of financing.

CASE NOTES

Penalties not Required. — Board's practice of waiving penalties under circumstances where employers were not at fault for failing to remit employer contributions to the Retirement System was entirely consistent with the Board's statutory discretion to adopt rules to prevent injustices under G.S. 135-6(f). Accordingly, the Treasurer and the Board were not required by G.S. 135-8(f)(3) to punish those employers whose employer contributions were not deposited in the Retirement System. Stone v. State, — N.C. App. —, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (Aug. 5, 2008).

ARTICLE 2.

Coverage of Governmental Employees under Title II of the Social Security Act.

§ 135-27. Transfers from State to certain association service.

(a) Any member whose service as a teacher or State employee is terminated because of acceptance of a position prior to July 1, 1983, with the North Carolina Education Association, the North Carolina State Employees' Association, North Carolina State Firemen's Association, the North Carolina State Highway Employees Association, North Carolina Teachers' Association and the State Employees' Credit Union, alumni associations of state-supported universities and colleges, local professional associations of teachers and State employees as defined by the Board of Trustees, and North Carolina State

School Boards Association may elect to leave his total accumulated contributions in this Retirement System during the period he is in such association employment, by filing with the Board of Trustees at the time of such termination the form provided by it for that purpose.

(b) Any member who files such an election shall remain a member of the Retirement System during the time he is in such association employment and does not withdraw his contributions. Such a member shall be entitled to all the rights and benefits of the Retirement System as though remaining in State service on the basis of the funds accumulated for his credit at the time of such transfer plus any additional accruals on account of future contributions made as hereinafter provided. Such former State employee may restore any such account and pay into the annuity savings fund before July 1, 1960, such amounts as would have been paid after transfer to such service, provided that the association makes contributions to the Retirement System on behalf of such former members in accordance with subsection (c) of this section.

(c) Under such rules as the Board of Trustees shall adopt, the association to which the member has been transferred may agree to contribute to the Retirement System on behalf of such member such current service contributions as would have been made by his employer had he remained in State service with actual compensation equal to the remuneration received from such association; provided the member continues to contribute to the Retirement System. Any period of such association employment on account of which contributions are made by both the association and the member as herein provided shall be credited as membership service under the Retirement System.

(d) The governing board of any association or organization listed in subsection (a), in its discretion, may elect on or before July 1, 1983, by an appropriate resolution of said board, to cause the employees of such association or organization so employed prior to July 1, 1983, to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such association's or organization's paying all of the employer's contributions or matching funds from funds of the association or organization and on such board's collecting from its employees the employees' contributions at such rates as may be fixed by law and by the regulations of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such association or organization may also be effected to the extent that such board requests; provided, the association or organization shall pay all of the employer's contributions or matching funds necessary for such purposes; and, provided further, such association or organization shall collect from its employees all employees' contributions necessary for such purpose, computed at such rates and in such amount as the Board of Trustees of the Retirement System shall determine, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds. The provisions of this subsection shall be fully applicable to the North Carolina Symphony Society, Inc. and the North Carolina State Art Society, Inc.

(e) Notwithstanding the foregoing, employees of the State Employees' Credit Union who are in service and members of the Retirement System on June 30, 1983, shall, on or before October 1, 1983, make an irrevocable election to do one of the following:

(1) Continue contributing membership service under the same conditions and requirements as are otherwise provided, and have the rights of a member to all benefits and a retirement allowance; or

(2) Receive a return of accumulated contributions with cessation of contributing membership service, under G.S. 135-5(f) and in any event with regular interest regardless of membership service; or

(3) Terminate contributing membership service and be entitled alternatively to the benefits and allowances provided under G.S. 135-3(8) or G.S. 135-5(a).

(f) Notwithstanding the foregoing, employees of the State Employees Association of North Carolina, the employees of the North Carolina Association of Educators, and the employees of the North Carolina School Boards Association who are in service and members of the Retirement System on June 30, 1985, shall, on or before October 1, 1985, make an irrevocable election to exercise one of the three options provided in G.S. 135-27(e). (1953, c. 1050, s. 1; 1959, c. 513, s. 5; 1961, c. 516, s. 5; 1967, c. 720, s. 14; 1969, cc. 540, 847, 1227; 1983, c. 412, ss. 4-6; c. 782; 1985, c. 757, s. 200; 2008-194, s. 6(a).)

Effect of Amendments. — Session Laws 2008-194, s. 6(a), effective August 8, 2008, inserted "State" in the last sentence of subsection (d).

§ 135-28.1. Transfer of members to employment covered by the Uniform Judicial Retirement System.

Editor's Note. — Session Laws 2008-107, s. 26.24(i), provides: "Notwithstanding the provisions of G.S. 135-28.1, G.S. 135-70.1, or any other law, any member covered by this section shall not be eligible to transfer any remaining creditable service from the Teachers' and State Employees' Retirement System to the Consolidated Judicial Retirement System until the member has contributed to the Consolidated Judicial System for a period of five years beginning July 1, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 3.

Other Teacher, Employee Benefits; Child Health Benefits.

§§ 135-37 through 135-42.1: Recodified and renumbered as G.S. 135-43 to 135-47.3.

Editor's Note. — Session Laws 2008-168, s. 1(a), effective July 1, 2008, recodified former Article 3 (§§ 135-37 through 135-42.1) of Chapter 135 as Article 3A of Chapter 135 containing §§ 135-37.1 through 135-42.1. The section numbers were subsequently renumbered as G.S. 135-43 through 135-47.3 at the direction of the Revisor of Statutes. At the end of Article 3A are tables showing comparable sections of Article 3 and their disposition in Article 3A.

Former § 135-39.3A was repealed by Session Laws 1987, c. 857, s. 4. Former § 135-39.4 was repealed by Session Laws 1985 (Regular Session, 1986), c. 1020, s. 2. Former §§ 135-39.5B, 135-40.4, 135-40.6, 135-40.8, and 135-40.9 were repealed effective July 1, 2008, by Session Laws 2007-323, s. 28.22A(a). Former § 135-40.7A was repealed by Session Laws 1997-512, s. 15.

Former G.S. 135-40 was repealed by Session Laws 2008-168, s. 3(b), effective July 1, 2008. The following local modifications applied to former G.S. 135-40: **Local Modifications. —** Bladen: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Cherokee: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Mitchell: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Rutherford: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Washington: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Wilkes: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; and towns of Biltmore Forest: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Black Creek: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Black Mountain: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Blowing Rock: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Forest City: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Ocean Isle Beach: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Sunset Beach:

2004-124, s. 31.26, as amended by 2007-405, s. 1; Tabor City: 2004-124, s. 31.26, as amended by 2007-405, s. 1.

Former G.S. 135-40.1 was repealed by Session Laws 2008-168, s. 3(d), effective July 1, 2008. The following local modifications applied to former G.S. 135-40.1: **Local Modifications.** — Bladen: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Cherokee: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Mitchell: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Rutherford: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Washington: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Wilkes: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; and towns of Biltmore Forest: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Black Creek: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Black Mountain: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Blowing Rock: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Forest City: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Ocean Isle Beach: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Sunset Beach: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Tabor City: 2004-124, s. 31.26, as amended by 2007-405, s. 1.

Former G.S. 135-40.6A was repealed by Session Laws 2008-168, s. 3(k), effective July 1, 2008.

ARTICLE 3A.

Other Benefits for Teachers, State Employees, Retired State Employees, and Child Health.

Part 1. General Provisions.

§ 135-43. Confidentiality of information and medical records; provider contracts.

(a) Any information as herein described in this section which is in the possession of the Executive Administrator and the Board of Trustees of the State Health Plan for Teachers and State Employees or its Claims Processor under the Plan or the Predecessor Plan shall be confidential and shall be exempt from the provisions of Chapter 132 of the General Statutes or any other provision requiring information and records held by State agencies to be made public or accessible to the public. This section shall apply to all information concerning individuals, including the fact of coverage or noncoverage, whether or not a claim has been filed, medical information, whether or not a claim has been paid, and any other information or materials concerning a plan participant. Provided, however, such information may be released to the State Auditor, or to the Attorney General, or to the persons designated under G.S. 135-43.3 in furtherance of their statutory duties and responsibilities, or to such persons or organizations as may be designated and approved by the Executive Administrator and Board of Trustees of the Plan, but any information so released shall remain confidential as stated above and any party obtaining such information shall assume the same level of responsibility for maintaining such confidentiality as that of the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees.

(b) Notwithstanding the provisions of this Article, the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees may contract with providers of institutional and professional medical care and services to establish preferred provider networks. The terms pertaining to reimbursement rates or other terms of consideration of any contract between hospitals, hospital authorities, doctors, or other medical providers, or a pharmacy benefit manager and the Plan, or contracts pertaining to the provision of any medical benefit offered under the Plan, including its optional alternative comprehensive benefit plans, and programs available under the optional alternative plans, shall not be a public record under

Chapter 132 of the General Statutes for a period of 30 months after the date of the expiration of the contract. Provided, however, nothing in this subsection shall be deemed to prevent or restrict the release of any information made not a public record under this subsection to the State Auditor, the Attorney General, the Director of the State Budget, the Plan's Executive Administrator, the Department of Health and Human Services solely for the purpose of implementing the transition of NC Health Choice from the Plan to the Department of Health and Human Services, and the Committee on Employee Hospital and Medical Benefits solely and exclusively for their use in the furtherance of their duties and responsibilities. The design, adoption, and implementation of the preferred provider contracts, networks, and optional alternative comprehensive health benefit plans, and programs available under the optional alternative plans, as authorized under G.S. 135-45 are not subject to the requirements of Chapter 143 of the General Statutes. The Executive Administrator and Board of Trustees shall make reports as requested to the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital and Medical Benefits. (1981, c. 355; 1981 (Reg. Sess., 1982), c. 1398, ss. 3, 4; 1983, c. 922, s. 21.10; 1985, c. 732, s. 38; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 1998-1, s. 4(h); 2007-323, s. 28.22A(c); 2008-107, s. 10.13(m); 2008-168, s. 1(a), (c), (d).)

Editor's Note. — Session Laws 2008-168, s. 1(a), effective July 1, 2008, recodified former Article 3 of Chapter 135 as Article 3A of Chapter 135. Session Laws 2008-168, s. 1(c), recodified Part 1 of Article 3 of Chapter 135 as Part 1A of Article 3A of Chapter 135. Part 1A of Article 3A was subsequently renumbered as Part 1 of Article 3A at the direction of the Revisor of Statutes.

This section was formerly codified as G.S. 135-37. It was recodified as G.S. 135-37.1 by Session Laws 2008-168, s. 1(d), effective July 1, 2008. It has been renumbered as G.S. 135-43 at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 10.13(m), effective July 1, 2008, inserted "the Department of Health and Human Services solely for the purpose of implementing the transition of NC Health Choice from the Plan to the Department of Health and Human Services" in the third sentence of subsection (b).

Session Laws 2008-168, s. 1(d), effective July 1, 2008, in subsection (b), in the second and fourth sentences, substituted "optional alternative comprehensive benefit plans, and programs available under the optional alternative plans" for "optional plans or programs"; and in the last sentence, deleted "on its progress in negotiating the preferred provider contracts" from the end.

§ 135-43.1. Committee on Employee Hospital and Medical Benefits.

(a) The Committee on Employee Hospital and Medical Benefits shall consist of 12 members as follows:

(1) The President Pro Tempore of the Senate or a designee thereof;
(2) The Speaker of the House of Representatives or a designee thereof;
(3) Five members of the Senate appointed by the President Pro Tempore of the Senate; and
(4) Five members of the House of Representatives appointed by the Speaker.

(b) The President Pro Tempore of the Senate and the Speaker of the House of Representatives, or their designees, shall remain on the Committee for the duration of their terms in those offices. Terms of the other Committee members are for two years. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. Members shall serve until their successors are appointed.

(c) The Committee shall review programs of hospital, medical and related care provided by Part 3 and Part 5 of this Article and programs of long-term care benefits provided by Part 4 of this Article as recommended by the Executive Administrator and Board of Trustees of the Plan. The Executive Administrator and the Board of Trustees shall provide the Committee with any information or assistance requested by the Committee in performing its duties under this Article. The Committee shall meet not less than once each quarter to review the actions of the Executive Administrator and Board of Trustees. At each meeting, the Executive Administrator shall report to the Committee on any administrative and medical policies which have been issued as rules in accordance with G.S. 135-44.8 and on any benefit denials, resulting from the policies, which have been appealed to the Board of Trustees.

(d) The time members spend on Committee business shall be considered official legislative business for purposes of G.S. 120-3. (1981, c. 859, s. 13.18; 1981 (Reg. Sess., 1982), c. 1398, s. 5; 1983, c. 452, ss. 1, 2; 1985, c. 732, s. 45; 1987, c. 61; c. 857, s. 1; 1989 (Reg. Sess., 1990), c. 1038, s. 19.1; 1991, c. 739, s. 21; 1995, c. 229, s. 1; 1997-278, s. 2; 1997-468, s. 1; 1998-1, s. 4(b); 2008-168, ss. 1(a), (c), (e).)

Editor's Note. — This section was formerly codified as G.S. 135-38. It was recodified as G.S. 135-37.2 by Session Laws 2008-168, s. 1(e), effective July 1, 2008. It has been renumbered as G.S. 135-43.1 at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-168, s. 1(e), effective July 1, 2008, redesignated subdivisions (a)(2a) through (a)(4a) as subdivisions (a)(2) through (a)(4); deleted "and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment and expire January 14, 1997" at the end of the first sentence of subsection (b); in subsection (c), in the last sentence, deleted "and regulations" following "which have been issued as rules" and substituted "G.S. 135-44.8" for "G.S. 135-39.8".

§ 135-43.2. State Health Plan Administrative Commission.

(a) The State Health Plan Administrative Commission (hereinafter "Commission") is created. It is composed of three members appointed by the General Assembly as follows:

(1) In 2008 and quadrennially thereafter, two members appointed for two-year terms by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and in 2010 and quadrennially thereafter, one member appointed for a two-year term by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(2) In 2008 and quadrennially thereafter, one member appointed for a two-year term by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and in 2010 and quadrennially thereafter, two members appointed for two-year terms by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(b) Terms of office shall commence July 1 and end June 30, except that the terms of the initial members shall commence upon appointment and expire June 30, 2010.

(c) The Commissioner of Insurance or his designee serves as secretary of the Commission.

(d) Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The Governor may remove any member of the Commission from office after a hearing for nonfeasance, misfeasance, or malfeasance. The General Assembly may remove any member of the Commission.

(f) The Commission shall elect from its membership a chair and a vice-chair to serve terms coterminous with the terms of the members.

(g) The Commission meets at the call of the chair or upon written request of at least two members.

(h) The Commission shall be located administratively within the Department of Insurance but shall exercise all of its prescribed statutory powers independently of the Commissioner of Insurance.

(i) A majority of the Commission shall constitute a quorum for the transaction of business.

(j) Members of the Commission shall receive travel allowances under G.S. 138-6 when traveling to and from meetings of the Commission, but shall not receive any subsistence allowance or per diem under G.S. 138-5. (2008-168, s. 2.1; 2008-187, s. 49.)

Editor's Note. — Session Laws 2008-168, s. 2.1, made this section effective August 4, 2008.

This section was codified as G.S. 135.38.5A under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2.1, effective July 1, 2008. Session Laws 2008-187, s. 49, amended Session Laws 2008-168, s. 2.1, by substituting "135-38.5A" for "135.38.5A" as the section number. The section was subsequently placed in Part 1 of Article 3A of Chapter 135 and renumbered as G.S. 135-43.2 at the direction of the Revisor of Statutes.

§ 135-43.3. Oversight team.

(a) The Committee on Employee Hospital and Medical Benefits may use employees of the Legislative Services Office and may employ contractual services as approved by the Legislative Services Commission to monitor the Executive Administrator and Board of Trustees, the Claims Processor, and the Comprehensive Major Medical Plan [State Health Plan for Teachers and State Employees]. The Director of the Budget may use employees of the Office of State Budget and Management to monitor the Executive Administrator and Board of Trustees, the Claims Processor, and the Comprehensive Major Medical Plan [State Health Plan for Teachers and State Employees]. Employees authorized by the Legislative Services Commission and the Director of the Budget to provide assistance to the Committee on Employee Hospital and Medical Benefits and to the Director of the Budget shall comprise an oversight team.

(b) The oversight team shall, jointly or individually, have access to all records of the Board of Trustees, the Executive Administrator, the Claims Processor, and the Plan. The oversight team shall, jointly or individually, be entitled to attend all meetings of the Board of Trustees.

(c) The oversight team shall report to the Committee on Employee Hospital and Medical Benefits when requested by the Committee. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, ss. 47, 67; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2008-168, ss. 1(a), 2(a), (b).)

Editor's Note. — This section was formerly codified as G.S. 135-39.3. It was recodified as G.S. 135-37.3 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(b), effective July 1, 2008. It has been placed in Part 1 and renumbered as G.S. 135-43.3 at the direction of the Revisor of Statutes.

Session Laws 2007-323, s. 28.22A(o), authorized the substitution of "State Health Plan for Teachers and State Employees" for "Teachers' and State Employees' Comprehensive Medical Plan." In subsection (a) of this section however, "Teachers' and State Employees'" did not precede "Comprehensive Major Medical Plan" and therefore the substitution was not made. The amendment by Session Laws 2008-168, s. 2(b), failed to indicate the substitution with strike through and underline coding. The bracketed text has been set out at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-168, s. 2(b), effective July 1, 2008, in subsection (a), substituted "Employees authorized by the Legislative Services Commission and the Director of the Budget to provide assistance" for "Such assistance" in the last sentence; and in subsection (b), deleted "Comprehensive Major Medical" preceding "Plan" in the first sentence, and substituted "The oversight team" for "They" in the last sentence.

§ 135-43.4. Committee on Actuarial Valuation of Retired Employees' Health Benefits.

(a) There is established the Committee on Actuarial Valuation of Retired Employees' Health Benefits. The Committee shall be responsible for collecting data and reviewing assumptions for the sole purpose of conducting required actuarial valuations of State supported retired employees' health benefits under other post-employment benefit accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation.

(b) The Committee on Actuarial Valuation of Retired Employees' Health Benefits shall consist of five members serving ex officio, as follows:

(1) The State Budget Officer, who shall serve as the Chair;
(2) The State Auditor;
(3) The State Controller;
(4) The State Treasurer; and
(5) The Executive Administrator for the Teachers' and the State Employees' Comprehensive Major Medical Plan [State Health Plan for Teachers and State Employees].

(c) A majority of the members of the Committee then serving shall constitute a quorum.

(d) Each member shall be entitled to one vote on the Committee. Three affirmative votes shall be necessary for a decision by the members at any meeting of the Committee.

(e) The Committee shall keep in convenient form such data as is necessary for actuarial valuation of retired employees' health benefits under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation. The Department of State Treasurer, Retirement Systems Division, the State Health Plan for Teachers and State Employees, and any other State agency, department, or university institution, local public school agency, or local community college institution shall provide any necessary data upon request of the Committee for the purpose of conducting its responsibilities.

(f) The Committee shall designate either the actuary under contract with the Department of State Treasurer, Retirement Systems Division, or the actuary under contract with the State Health Plan for Teachers and State Employees as the technical adviser to the Committee on matters regarding the actuarial valuation of retired employees' health benefits created by the provisions of this Chapter. The technical advisor shall perform such actuarial valuation and other duties as are required under this Chapter.

(g) The Committee shall secure an annual calendar-year actuarial valuation of retired employees' health benefits under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation.

(h) The Committee shall keep a record of all of its proceedings which shall be open to public inspection. (2007-467, s. 1; 2007-323, s. 28.22A(o); 2008-168, s. 1(a), (c), (f).)

Editor's Note. — This section was formerly codified as G.S. 135-38.1. It was recodified under Part 1A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 1(f), effective July 1, 2008. It has been renumbered as G.S. 135-43.4 at the direction of the Revisor of Statutes.

Session Laws 2007-323, s. 28.22A(o), authorized the substitution of "State Health Plan for Teachers and State Employees" for "Teachers' and State Employees' Comprehensive Major Medical Plan." In subdivision (b)(5), however, the text reads "Teachers' and the State Employees' Comprehensive Major Medical Plan." In subdivision (b)(5), however, the text reads "Teachers' and the State Employees' Comprehensive Major Medical Plan." The bracketed language in subdivision (b)(5) was added at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2007-323, s. 28.22A(o), effective July 1, 2008, in subsections (e) and (f), substituted "State Health Plan for Teachers and State Employees" for "Teachers' and State Employees' Comprehensive Major Medical Plan."

§ 135-43.5. Auditing of the Plan.

The Board of Trustees and the Executive Administrator of the State Health Plan for Teachers and State Employees and the Claims Processor shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 913, s. 24; 1985, c. 732, s. 46; 1985 (Reg. Sess., 1986), c. 1020, p. 20; 2007-323, s. 28.22A(o); 2007-345, s. 12; 2008-168, ss. 1(a), (c), 2(g).)

Editor's Note. — This section was formerly codified as G.S. 135-39.1. It was recodified as G.S. 135-38.4 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(g), effective July 1, 2008. It has been placed in Part 1 and renumbered as G.S. 135-43.5 at the direction of the Revisor of Statutes.

§ 135-43.6. Reports to the General Assembly.

The Executive Administrator and Board of Trustees shall report to the General Assembly at such times and in such forms as shall be designated by the Committee on Employee Hospital and Medical Benefits. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, ss. 55, 55.1; 1985 (Reg. Sess., 1986), c. 1020, s. 7; 2008-168, ss. 1(a), (c), 2(c).)

Editor's Note. — This section was formerly codified as G.S. 135-39.9. It was recodified as G.S. 135-37.4 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(c), effective July 1, 2008. It has been placed in Part 1 and renumbered as G.S. 135-43.6 at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-168, s. 2(c), effective July 1, 2008, deleted the subsection (a) designation and substituted "designated" for "provided."

§ 135-43.7. Contract disputes not contested case under the Administrative Procedure Act, Chapter 150B of the General Statutes.

A dispute involving the performance, terms, or conditions of a contract between the Plan and an entity under contract with the Plan is not a contested case under Article 3 of Chapter 150B of the General Statutes. (2001-192, s. 2; 2008-168, ss. 1(a), (c), 2(d).)

Editor's Note. — This section was formerly codified as G.S. 135-39.11. It was recodified as G.S. 135-37.5 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(d), effective July 1, 2008. It has been placed in Part 1 and renumbered as G.S. 135-43.7 at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-168, s. 2.(d), effective July 1, 2008, added "not contested case under the Administrative Procedure Act, Chapter 150B of the General Statutes" in the section heading.

Part 2. Administrative Structure.

§ 135-44. Board of Trustees established.

(a) There is established the Board of Trustees of the State Health Plan for Teachers and State Employees.

(b) The Board of Trustees of the State Health Plan for Teachers and State Employees shall consist of nine members.

(c) Three members shall be appointed by the Governor. Terms shall be for two years. Vacancies shall be filled by the Governor. Of the members appointed by the Governor, one shall be either:

(1) An employee of a State department, agency, or institution;
(2) A teacher employed by a North Carolina public school system;
(3) A retired employee of a State department, agency, or institution; or
(4) A retired teacher from a North Carolina public school system.

(d) Three members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. Terms shall be for two years. Vacancies shall be filled in accordance with G.S. 120-122.

(e) Three members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Terms shall be for two years. Vacancies shall be filled in accordance with G.S. 120-122.

(f) Each appointing authority may remove any member appointed by that appointing authority.

(g) The members of the Board of Trustees shall receive one hundred dollars ($100.00) per day, except employees eligible to enroll in the Plan, whenever the full Board of Trustees holds a public session, and travel allowances under G.S. 138-6 when traveling to and from meetings of the Board of Trustees or hearings under G.S. 135-44.7, but shall not receive any subsistence allowance or per diem under G.S. 138-5, except when holding a meeting or hearing where this section does not provide for payment of one hundred dollars ($100.00) per day.

(h) No member of the Board of Trustees may serve more than three consecutive two-year terms.

(i) Meetings of the Board of Trustees may be called by the Executive Administrator, the Chair, or by any three members. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 1; 1985, c. 732, ss. 2-5, 8, 11, 42, 59, 60; 1985 (Reg. Sess., 1986), c. 1020, s. 1; 1987, c. 857, s. 2; 1995, c. 490, s. 56; 2002-126, s. 28.16(a); 2007-323, s. 28.22A(b); 2008-168, ss. 1(a), 2(a), (e).)

Editor's Note. — Session Laws 2008-168, s. 1(a), effective July 1, 2008, recodified former Article 3 of Chapter 135 as Article 3A of Chapter 135. Session Laws 2008-168, s. 2(a), recodified Part 2 of Article 3 of Chapter 135 as Part 2A of Article 3A of Chapter 135. Part 2A of Article 3A was subsequently renumbered as Part 2 of Article 3A at the direction of the Revisor of Statutes.

This section was formerly codified as G.S. 135-39. It was recodified as G.S. 135-38.2 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(e), effective July 1, 2008. It has been renumbered as G.S. 135-44 at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 2008-168, s. 2(e), effective July 1, 2008, rewrote the section.

§ 135-44.1. Officers, quorum, meetings.

(a) The Board of Trustees shall elect from its own membership such officers as it sees fit.

(b) Six members of the Board of Trustees in office shall constitute a quorum. Decisions of the Board of Trustees shall be made by a majority vote of the Trustees present, except as otherwise provided in this Part.

(c) Meetings may be called by the Chair, or at the written request of three members. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1987, c. 857, s. 3; 2008-168, ss. 1(a), 2(a), (f).)

Editor's Note. — This section was formerly codified as G.S. 135-39.2. It was recodified as G.S. 135-38.3 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(f), effective July 1, 2008. It has been renumbered as G.S. 135-44.1 at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-168, s. 2(f), effective July 1, 2008, substituted "Chair" for "Chairman" in subsection (c).

§ 135-44.2. Executive Administrator.

(a) The Plan shall have an Executive Administrator and a Deputy Executive Administrator. The Executive Administrator and the Deputy Executive Administrator positions are exempt from the provisions of Chapter 126 of the General Statutes as provided in G.S. 126-5(c1).

(b) The Executive Administrator shall be appointed by the State Health Plan Administrative Commission. The term of employment and salary of the Executive Administrator shall be set by the State Health Plan Administrative Commission upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits.

The Executive Administrator may be removed from office by the State Health Plan Administrative Commission, upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits, and any vacancy in the office of Executive Administrator may be filled by the State Health Plan Administrative Commission with the term of employment and salary set upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits.

(c) The Executive Administrator shall appoint the Deputy Executive Administrator and may employ such clerical and professional staff, and such other assistance as may be necessary to assist the Executive Administrator and the Board of Trustees in carrying out their duties and responsibilities under this Article. The Executive Administrator may designate managerial, professional, or policy-making positions as exempt from the State Personnel Act. The Executive Administrator may also negotiate, renegotiate and execute contracts with third parties in the performance of the Executive Administrator's duties and responsibilities under this Article; provided any contract negotiations, renegotiations and execution with a Claims Processor, with an optional alternative comprehensive health benefit plan, or program thereunder, authorized under G.S. 135-45, with a preferred provider of institutional or professional hospital and medical care, or with a pharmacy benefit manager shall be done only after consultation with the Committee on Employee Hospital and Medical Benefits.

(d) The Executive Administrator shall be responsible for:

(1) Cost management programs;
(2) Education and illness prevention programs;
(3) Training programs for Health Benefit Representatives;
(4) Membership functions;
(5) Long-range planning;
(6) Provider and participant relations; and
(7) Communications.

Managed care practices used by the Executive Administrator in cost management programs are subject to the requirements of G.S. 58-3-191, 58-3-221, 58-3-223, 58-3-235, 58-3-240, 58-3-245, 58-3-250, 58-3-265, 58-67-88, and 58-50-30.

(e) The Executive Administrator shall make reports and recommendations on the Plan to the President of the Senate, the Speaker of the House of Representatives and the Committee on Employee Hospital and Medical Benefits. (1985, c. 732, s. 10; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 1987, c. 857, s. 5; 1991, c. 427, s. 2; 2000-141, s. 2; 2001-446, s. 6; 2004-124, s. 31.27(a); 2005-276, ss. 29.33(c), 29.34(a); 2007-323, s. 28.22A(*l*); 2008-168, ss. 1(a), 2(a), (h), 2.2.)

Editor's Note. — This section was formerly codified as G.S. 135-39.4A. It was recodified as G.S. 135-38.5 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(h), effective July 1, 2008. It has been renumbered as G.S. 135-44.2 at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 2008-168, s. 2(h), effective July 1, 2008, redesignated subsections (f) through (h) as subsections (c) through (e), and in present subsection (c), substituted "the Executive Administrator's" for "his" and substituted "an optional alternative comprehensive health benefit plan, or program thereunder, authorized under G.S. 135-45" for "an optional hospital and medical benefit plan or program authorized under G.S. 135-40."

Session Laws 2008-168, s. 2.2, effective the later of 10 days after this act becomes law [July 1. 2008], or the appointment of at least two members of the State Health Plan Administrative Commission as established by Section 3.1 of this act, substituted "State Health Plan Administrative Commission" for "Commissioner of Insurance" throughout subsection (b).

§ 135-44.3. Meaning of "Executive Administrator and Board of Trustees".

Whenever in this Article the words "Executive Administrator and Board of Trustees" appear, they mean that the Executive Administrator shall have the power, duty, right, responsibility, privilege or other function mentioned, after consulting with the Board of Trustees of the State Health Plan for Teachers and State Employees. (1985, c. 732, s. 57; 1991, c. 427, s. 8; 2007-323, s. 28.22A(d); 2008-168, ss. 1(a), 2(a), (i).)

Editor's Note. — This section was formerly codified as G.S. 135-39.10. It was recodified as G.S. 135-38.6 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(i), effective July 1, 2008. It has been renumbered as G.S. 135-44.3 at the direction of the Revisor of Statutes.

§ 135-44.4. Powers and duties of the Executive Administrator and Board of Trustees.

The Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan shall have the following powers and duties:

(1) Supervising and monitoring of the Claims Processor.
(2) Providing for enrollment of employees in the Plan.
(3) Communicating with employees enrolled under the Plan.
(4) Communicating with health care providers providing services under the Plan.
(5) Making payments at appropriate intervals to the Claims Processor for benefit costs and administrative costs.
(6) Conducting administrative reviews under G.S. 135-44.7.
(7) Annually assessing the performance of the Claims Processor.
(8) Preparing and submitting to the Governor and the General Assembly cost estimates for the Plan, including those required by Article 15 of Chapter 120 of the General Statutes.

(9) Recommending to the Governor and the General Assembly changes or additions to the health benefits programs and health care cost containment programs offered under the Plan, together with statements of financial and actuarial effects as required by Article 15 of Chapter 120 of the General Statutes.

(10) Working with State employee groups to improve health benefit programs.

(11) Determining basis of payments to health care providers, including payments in accordance with G.S. 58-50-56.

(12) Requiring bonding of the Claims Processor in the handling of State funds.

(13) In case of termination of the contract under subdivision (27) of this section, to select a new Claims Processor, after bidding procedures approved by the Department of Administration.

(14) Notwithstanding the provisions of Part 3 of this Article, to formulate and implement cost-containment measures which are not in direct conflict with that Part.

(15) Implementing pilot programs necessary to evaluate proposed cost containment measures which are not in direct conflict with Part 3 of this Article, and expending funds necessary for the implementation of the pilot programs.

(16) Authorizing coverage for alternative forms of care not otherwise provided by the Plan in individual cases when medically necessary, medically equivalent to services covered by the Plan, and when such alternatives would be less costly than would have been otherwise.

(17) Establishing and operating a hospital and other provider bill audit program and a fraud detection program.

(18) Determining administrative and medical policies that are not in direct conflict with Part 3 of this Article after consultation with the Claims Processor and the Plan's consulting actuary when Plan costs are involved.

(19) Supervising the payment of claims and all other disbursements under this Article, including the recovery of any disbursements that are not made in accordance with the provisions of this Article.

(20) Implementing and administering a program of long-term care benefits pursuant to Part 4 of this Article.

(21) Repealed by Session Laws 2008-107, s. 10.13(a), effective July 1, 2008.

(22) Implementing and administering a case management and disease management program and a wellness program.

(23) Implementing and administering a pharmacy benefit management program through a third-party contract awarded after receiving competitive quotes.

(24) Repealed by Session Laws 2008-168, s. 2(j), effective July 1, 2008.

(25) The Executive Administrator may establish pilot programs to measure potential cost savings and improvements in patient care available through local, provider-driven medical management.

(26) It is the intent of the General Assembly that active employees and retired employees covered under the Plan and its successor Plan shall have several opportunities in each fiscal year to attend presentations conducted by Plan management staff providing detailed information about benefits, limitations, premiums, co-payments, and other pertinent Plan matters. To this end, beginning in 2007 and annually thereafter, the Plan's management staff shall conduct multiple presentations each year to Plan members and association groups representing active and retired employees across all geographic regions of

the State. Regional meetings shall be held in locations that afford reasonably convenient access to Plan members. The presentations shall be designed not only to present information about the Plan but also to hear and respond to Plan members' questions and concerns.

(27) The Executive Administrator and Board of Trustees may terminate the contract with the Claims Processor in accordance with the terms of the contract.

(28) The prompt pay requirements of G.S. 58-3-225 apply to the Plan. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 2; 1985, c. 732, ss. 7, 9, 23, 24, 50, 51; 1985 (Reg. Sess., 1986), c. 1020, ss. 3, 20; 1987, c. 857, ss. 6, 7; 1987 (Reg. Sess., 1988), c. 1091, s. 5; 1989, c. 752, s. 22(a); 1991, c. 427, s. 3; 1993 (Reg. Sess., 1994), c. 679, s. 10.3; 1997-468, s. 2; 1997-519, s. 3.15; 1998-1, s. 4(c); 2000-141, s. 3; 2001-253, ss. 1(a), 1(q); 2001-487, s. 85.5; 2006-249, s. 4(b); 2007-323, s. 28.22(i); 2008-107, s. 10.13(a); 2008-168, ss. 1(a), 2(a), (k), (j).)

Editor's Note. — This section was formerly codified as G.S. 135-39.5. It was recodified as G.S. 135-38.7 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(j), effective July 1, 2008. It has been renumbered as G.S. 135-44.4 at the direction of the Revisor of Statutes.

Former G.S. 135-39.5A was recodified as G.S. 135-38.7(29) by Session Laws 2008-168, s. 2(k), effective July 1, 2008. G.S. 135-38.7(29) was renumbered as G.S. 135-44.4(27) at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 10.13(a), effective July 1, 2008, deleted subdivision (23) which read: "Implementing and administering a program of child health insurance benefits pursuant to Part 5 of this Article."

Session Laws 2008-168, s. 2(j), effective July 1, 2008, rewrote the section.

§ 135-44.5. Health benefit trust funds created.

(a) There are hereby established two health benefit trust funds, to be known as the Public Employee Health Benefit Fund and the Health Benefit Reserve Fund for the payment of hospital and medical benefits. As used in this section, the term "health benefit trust funds" refers to the fund type described under G.S. 143C-1-3(a)(10).

All premiums, fees, charges, rebates, refunds or any other receipts including, but not limited to, earnings on investments, occurring or arising in connection with health benefits programs established by this Article, shall be deposited into the Public Employee Health Benefit Fund. Disbursements from the Fund shall include any and all amounts required to pay the benefits and administrative costs of such programs as may be determined by the Executive Administrator and Board of Trustees.

Any unencumbered balance in excess of prepaid premiums or charges in the Public Employee Health Benefit Fund at the end of each fiscal year shall be used first, to provide an actuarially determined Health Benefit Reserve Fund for incurred but unpresented claims, second, to reduce the premiums required in providing the benefits of the health benefits programs, and third to improve the plan, as may be provided by the General Assembly. The balance in the Health Benefits Reserve Fund may be transferred from time to time to the Public Employee Health Benefit Fund to provide for any deficiency occurring therein.

The Public Employee Health Benefit Fund and the Health Benefit Reserve Fund shall be deposited with the State Treasurer and invested as provided in G.S. 147-69.2 and 147-69.3.

(b) Disbursement from the Public Employee Health Benefit Fund may be made by warrant drawn on the State Treasurer by the Executive Administrator, or the Executive Administrator and Board of Trustees may by contract authorize the Claims Processors to draw the warrant.

(c) Separate and apart from the health benefit trust funds authorized by subsections (a) and (b) of this section, there shall be a Public Employee Long-Term Care Benefit Fund if the long-term care benefits provided by Part 4 of this Article are administered on a self-insured basis.

(d) Repealed by Session Laws 2008-107, s. 10.13(a), effective July 1, 2008. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, ss. 43, 63; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 1997-468, s. 3; 1998-1, s. 4(d); 2008-107, s. 10.13(a); 2008-168, ss. 1(a), 2(a), *(l)*.)

Editor's Note. — This section was formerly codified as G.S. 135-39.6. It was recodified as G.S. 135-38.8 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(l), effective July 1, 2008. It has been renumbered as G.S. 135-44.5 at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 10.13(a), effective July 1, 2008, deleted subsection (d) related to the Child Health Insurance Fund.

Session Laws 2008-168, s. 2 *(l)*, effective July 1, 2008, substituted "Health benefit trust" for "Special" in the section heading; in subsection (a), substituted "health benefit trust" for "special" and added the second sentence; substituted "health benefit trust" for "special" in subsection (c).

§ 135-44.6. Premiums set.

(a) The Executive Administrator and Board of Trustees shall, from time to time, establish premium rates for the Plan except as they may be established by the General Assembly in the Current Operations Appropriations Act, and establish rules for payment of the premiums. Premium rates shall be established for coverages where Medicare is the primary payer of health benefits separate and apart from the rates established for coverages where Medicare is not the primary payer of health benefits. The amount of State funds contributed for optional coverage for employees and retirees on a partially contributory basis shall not be more than the Plan's total noncontributory premium for Employee Only coverage, with the person selecting the coverage paying the balance of the partially contributory premium not paid by the Plan. The amount of State funds contributed shall not exceed the Plan's cost for Employee Only coverage. The Executive Administrator and Board of Trustees shall not impose a partially contributory premium until after it has consulted on the premium and the optional coverage design with the Committee on Employee Hospital and Medical Benefits.

(b) The Executive Administrator and Board of Trustees shall establish separate premium rates for the long-term care benefits provided by Part 4 of this Article if the benefits are administered on a self-insured basis.

(c) Repealed by Session Laws 2008-107, s. 10.13(a), effective July 1, 2008.

(d) In setting premiums for firefighters, rescue squad workers, and members of the national guard, and their eligible dependents, the Executive Administrator and Board of Trustees shall establish rates separate from those affecting other members of the Plan. These separate premium rates shall include rate factors for incurred but unreported claim costs, for the effects of adverse selection from voluntary participation in the Plan, and for any other actuarially determined measures needed to protect the financial integrity of the Plan for the benefit of its served employees, retired employees, and their eligible dependents.

(e) The total amount of premiums due the Plan from charter schools as employing units, including amounts withheld from the compensation of Plan members, that is not remitted to the Plan by the fifteenth day of the month following the due date of remittance shall be assessed interest of one and one-half percent (1 1/2%) of the amount due the Plan, per month or fraction thereof, beginning with the sixteenth day of the month following the due date of the remittance. The interest authorized by this section shall be assessed until the premium payment plus the accrued interest amount is remitted to the Plan. The remittance of premium payments under this section shall be presumed to have been made if the remittance is postmarked in the United States mail on a date not later than the fifteenth day of the month following the due date of the remittance. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 52; 1991, c. 427, s. 5; 1997-468, s. 4; 1998-1, s. 4(e); 1999-237, s. 28.29(h); 2003-69, s. 2; 2004-124, s. 31.21(c); 2005-276, s. 29.31(e); 2007-323, s. 28.22A(m), (m1), (o); 2007-345, ss. 11, 12; 2008-107, s. 10.13(a); 2008-168, ss. 1(a), 2(a), (m).)

Editor's Note. — This section was formerly codified as G.S. 135-39.6A. It was recodified as G.S. 135-38.9 under Part 2A of Article 3 of Chapter 135 by Session Laws 2008-168, s. 2(m), effective July 1, 2008. It has been recodified in this Article and renumbered as G.S. 135-44.6 at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 10.13(a), effective July 1, 2008, deleted subsection (c) related to the premium rates for benefits provided under Part 5 of this Article.

Session Laws 2008-168, s. 2(m), effective July 1, 2008, in subsection (a), substituted "rules" for "regulations" and added the last three sentences; and substituted "firefighters" for "firemen" in subsection (d).

§ 135-44.7. Administrative review.

(a) If, after exhaustion of internal appeal handling as outlined in the contract with the Claims Processor any person is aggrieved, the Claims Processor shall bring the matter to the attention of the Executive Administrator and Board of Trustees, which shall promptly decide whether the subject matter of the appeal is a determination subject to external review under Part 4 of Article 50 of Chapter 58 of the General Statutes. The Executive Administrator and Board of Trustees shall inform the aggrieved person and the aggrieved person's provider of the decision and shall provide the aggrieved person notice of the aggrieved person's right to appeal that decision as provided in this subsection. If the Executive Administrator and Board of Trustees decide that the subject matter of the appeal is not a determination subject to external review, then the Executive Administrator and Board of Trustees may make a binding decision on the matter in accordance with procedures established by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees shall provide a written summary of the decisions made pursuant to this section to all employing units, all health benefit representatives, the oversight team provided for in G.S. 135-43.3, all relevant health care providers affected by a decision, and to any other parties requesting a written summary and approved by the Executive Administrator and Board of Trustees to receive a summary immediately following the issuance of a decision. A decision by the Executive Administrator and Board of Trustees that a matter raised on internal appeal is a determination subject to external review as provided in subsection (b) of this section may be contested by the aggrieved person under Chapter 150B of the General Statutes. The person contesting the decision may proceed with external review pending a decision in the contested case under Chapter 150B of the General Statutes.

(b) The Executive Administrator and Board of Trustees shall adopt and implement utilization review and internal grievance procedures that are substantially equivalent to those required under G.S. 58-50-61 and G.S. 58-50-62. External review of determinations shall be conducted in accordance with Part 4 of Article 50 of Chapter 58 of the General Statutes. As used in this section, "determination" is a decision by the Executive Administrator and Board of Trustees, or the Plan's designated utilization review organization administrated by or under contract with the Plan that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon information provided, does not meet the Plan's requirements for medical necessity, appropriateness, health care setting, or level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated.

(c) The Board of Trustees shall make the final agency decision in all cases contested pursuant to Chapter 150B of the General Statutes. The Executive Administrator shall execute the Board's final agency decisions. For purposes of G.S. 150B-44, the Board of Trustees is an agency that is a board or commission. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 53; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 1991, c. 427, s. 6; 2001-446, s. 5(e); 2008-168, ss. 1(a), 2(a), (n).)

Editor's Note. — This section was formerly codified as G.S. 135-39.7. It was recodified as G.S. 135-38.10 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(n), effective July 1, 2008. It has been renumbered as G.S. 135-44.7 at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-168, s. 2(n), effective July 1, 2008, substituted "G.S. 135-43.3" for "G.S. 135-39.3" in subsection (a); substituted "or the Plan's designated utilization review organization" for "the Plan's designated utilization review organization, or a self-funded health maintenance organization" in the third sentence of subsection (b); and added subsection (c).

§ 135-44.8. Rules.

The Executive Administrator and Board of Trustees may adopt rules to implement Parts 2, 3, 4, and 5 of this Article. The Executive Administrator and Board of Trustees shall provide to all employing units, all health benefit representatives, the oversight team provided for in G.S. 135-43.3, all relevant health care providers affected by a rule, and to any other persons requesting a written description and approved by the Executive Administrator and Board of Trustees written notice and an opportunity to comment not later than 30 days prior to adopting, amending, or rescinding a rule, unless immediate adoption of the rule without notice is necessary in order to fully effectuate the purpose of the rule. Rules of the Board of Trustees shall remain in effect until amended or repealed by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees shall provide a written description of the rules adopted under this section to all employing units, all health benefit representatives, the oversight team provided for in G.S. 135-43.3, all relevant health care providers affected by a rule, and to any other persons requesting a written description and approved by the Executive Administrator and Board of Trustees on a timely basis. Rules adopted by the Executive Administrator and Board of Trustees to implement this Article are not subject to Article 2A of Chapter 150B of the General Statutes. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 54; 1991, c. 427, s. 7; 1997-278, s. 3; 1997-468, s. 5; 1998-1, s. 4(f); 2001-253, s. 1(r); 2008-168, ss. 1(a), 2(a), (o).)

Editor's Note. — This section was formerly codified as G.S. 135-39.8. It was recodified as G.S. 135-38.11 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(o), effective July 1, 2008. It has been renumbered as G.S. 135-44.8 at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-168, s. 2(o), effective July 1, 2008, deleted "and regulations" and "or regulation" following "rules" and "rule", respectively, throughout the section; in the first sentence, substituted "adopt rules" for "issue rules"; substituted "G.S. 135-43.3" for "G.S. 135-39.3" in the second and fourth sentences; substituted "adopted" for "issued" in the fourth sentence; and added the last sentence.

Part 3. State Health Plan for Teachers and State Employees.

§ 135-45. Undertaking.

(a) The State of North Carolina undertakes to make available a State Health Plan (hereinafter called the "Plan") exclusively for the benefit of eligible employees, eligible retired employees, and certain of their eligible dependents, which will pay benefits in accordance with the terms of this Article. The Plan shall have all the powers and privileges of a corporation and shall be known as the State Health Plan for Teachers and State Employees. The Executive Administrator and Board of Trustees shall carry out their duties and responsibilities as fiduciaries for the Plan. The Plan shall administer one or more group health plans that are comprehensive in coverage and shall provide eligible employees and retired employees coverage on a noncontributory basis under at least one of the group plans with benefits equal to that specified in subsection (g) of this section. The Executive Administrator and Board of Trustees may operate group plans as a preferred provider option, or health maintenance, point-of-service, or other organizational arrangement and may offer the plans to employees and retirees on a noncontributory or partially contributory basis. Plans offered on a partially contributory basis must provide benefits that are additional to that specified in subsection (g) of this section and may not be offered unless approved in an act of the General Assembly.

(b) Individuals eligible for coverage under G.S. 135-45.2 on a fully or partially contributory basis are eligible to participate in any plan authorized under this section.

(c) The State of North Carolina deems it to be in the public interest for North Carolina firefighters, rescue squad workers, and members of the national guard, and certain of their dependents, who are not eligible for any other type of comprehensive group health insurance or other comprehensive group health benefits, and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six consecutive months, to be given the opportunity to participate in the benefits provided by the State Health Plan for Teachers and State Employees. Coverage under the Plan shall be voluntary for eligible firefighters, rescue squad workers, and members of the national guard who elect participation in the Plan for themselves and their eligible dependents.

(d) The Plan benefits shall be provided under contracts between the Plan and the claims processors selected by the Plan. The Executive Administrator may contract with a pharmacy benefits manager to administer pharmacy benefits under the Plan. Such contracts shall include the applicable provisions of G.S. 135-45.1 through G.S. 135-45.15 and the description of the Plan in the request for proposal, and shall be administered by the respective claims processor or Pharmacy Benefits Manager, which will determine benefits and other questions arising thereunder. The contracts necessarily will conform to applicable State law. If any of the provisions of G.S. 135-45.1 through G.S. 135-45.15 and the request for proposals must be modified for inclusion in the contract because of State law, such modification shall be made.

(e) Payroll deduction shall be available for coverage under this Part for subscribers able to meet the Plan's requirements for payroll deduction.

(f) Notwithstanding any other provisions of the Plan, the Executive Administrator and Board of Trustees are specifically authorized to use all appropriate means to secure tax qualification of the Plan under any applicable provisions of the Internal Revenue Code of 1954 as amended. The Executive Administrator and Board of Trustees shall furthermore comply with all applicable provisions of the Internal Revenue Code as amended, to the extent that this compliance is not prohibited by this Article.

(g) The Executive Administrator and Board of Trustees shall not change the Plan's comprehensive health benefit coverage, co-payments, deductibles, out-of-pocket expenditures, and lifetime maximums in effect on July 1, 2008, that would result in a net increased cost to the Plan or in a reduction in benefits to Plan members unless and until the proposed changes are directed to be made in an act of the General Assembly. (2008-168, s. 3(c).)

Editor's Note. — Session Laws 2008-168, s. 1(a), effective July 1, 2008, recodified former Article 3 of Chapter 135 as Article 3A of Chapter 135. Session Laws 2008-168, s. 3(a), recodified Part 3 of Article 3 of Chapter 135 as Part 3A of Article 3A of Chapter 135. Part 3A of Article 3A was subsequently renumbered as Part 3 of Article 3A at the direction of the Revisor of Statutes.

This section was codified as G.S. 135-39.12 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(c), effective July 1, 2008. It has been renumbered as G.S. 135-45 at the direction of the Revisor of Statutes.

Session Laws 2008-168, s. 7, made this section effective July 1, 2008.

CASE NOTES

Cited in Carl v. State, — N.C. App. —, 665 S.E.2d 787, 2008 N.C. App. LEXIS 1630 (2008).

§ 135-45.1. General definitions.

As used in this Article unless the context clearly requires otherwise, the following definitions apply:

(1) Allowed amount. — The charge that the Plan or its claims proessors determines is reasonable for covered services provided to a Plan member. This amount may be established in accordance with an agreement between the provider and the Plan or its claims processor. In the case of providers that have not entered into an agreement with the Plan or its claims processor, the allowed amount will be the lesser of the provider's actual charge or a reasonable charge established by the Plan or its claims processor using a methodology that is applied to comparable providers for similar services under a similar health benefit plan.

(2) Benefit period. — The period of time during which charges for covered services provided to a Plan member must be incurred in order to be eligible for payment by the Plan.

(3) Chemical dependency. — The pathological use or abuse of alcohol or other drugs in a manner or to a degree that produces an impairment in personal, social, or occupational functioning and which may, but need not, include a pattern of tolerance and withdrawal.

(4) Claims Processor. — One or more administrators, third-party administrators, or other parties contracting with the Plan to administer Plan benefits.

(5) Clinical trials. — Patient research studies designed to evaluate new treatments, including prescription drugs. Coverage for clinical trials shall be as provided in G.S. 135-45.8.

(6) Comprehensive health benefit plan. — Health care coverage that consists of inpatient and outpatient hospital and medical benefits, as well as other outpatient medical services, prescription drugs, medical supplies, and equipment that are generally available in the health insurance market.

(7) Covered service; benefit; allowable expense. — Any medically necessary, reasonable, and customary items of service, including prescription drugs, and medical supplies included in the Plan.

(8) Deductible. — The dollar amount that must be incurred for certain covered services in a benefit period before benefits are payable by the Plan.

The deductible applies separately to each covered individual in each fiscal year, subject to an aggregate maximum per employee and child, employee and spouse, or employee and family coverage contract in any fiscal year.

If two or more family members are injured in the same accident, only one deductible is required for charges related to that accident during the benefit period.

(9) Dependent. — An eligible Plan member other than the subscriber.

(10) Dependent child. — A natural, legally adopted, or foster child or children of the employee and or spouse, unmarried, up to the first of the month following his or her 19th birthday, whether or not the child is living with the employee, as long as the employee is legally responsible for such child's maintenance and support. Dependent child shall also include any child under age 19 who has reached his or her 18th birthday, provided the employee was legally responsible for such child's maintenance and support on his or her 18th birthday. Dependent children of firefighters, rescue squad workers, and members of the national guard are subject to the same terms and conditions as are other dependent children covered by this subdivision. Eligibility of dependent children is subject to the requirements of G.S. 135-45.2(d).

(11) Employee or State employee. — Any permanent full-time or permanent part-time regular employee (designated as half-time or more) of an employing unit.

(12) Employing Unit. — A North Carolina School System; Community College; State Department, Agency, or Institution; Administrative Office of the Courts; or Association or Examining Board whose employees are eligible for membership in a State-Supported Retirement System. An employing unit also shall mean a charter school in accordance with Part 6A of Chapter 115C of the General Statutes whose board of directors elects to become a participating employer in the Plan under G.S. 135-45.5. Bona fide fire departments, rescue or emergency medical service squads, and national guard units are deemed to be employing units for the purpose of providing benefits under this Article.

(13) Experimental/Investigational. — Experimental/Investigational Medical Procedures. — The use of a service, supply, drug, or device not recognized as standard medical care for the condition, disease, illness, or injury being treated as determined by the Executive Administrator and Board of Trustees upon the advice of the Claims Processor.

(14) Firefighter. — Eligible firefighters as defined by G.S. 58-86-25 who belong to a bona fide fire department as defined by G.S. 58-86-25 and

who are not eligible for any type of comprehensive group health insurance or other comprehensive group health benefit coverage and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six months. Firefighter shall also include members of the North Carolina Firemen and Rescue Squad Workers' Pension Fund who are in receipt of a monthly pension, who are not eligible for any type of comprehensive group health insurance or other comprehensive group health benefit coverage, and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six months. Comprehensive group health insurance and other benefit coverage consists of inpatient and outpatient hospital and medical benefits, as well as other outpatient medical services, prescription drugs, medical supplies, and equipment that are generally available in the health insurance market. For purposes of this subdivision, comprehensive group health insurance and other benefit coverage includes Medicare benefits, CHAMPUS benefits, and other Uniformed Services benefits. North Carolina fire departments or their respective governing bodies shall certify the eligibility of their firefighters to the Plan for their participation in its benefits prior to enrollment.

(15) Health Benefits Representative. — The employee designated by the employing unit to administer the Plan for the unit and its employees. The HBR is responsible for enrolling new employees, reporting changes, explaining benefits, reconciling group statements, and remitting group fees. The State Retirement System is the Health Benefits Representative for retired State employees.

(16) Medical necessity or medically necessary. — Covered services or supplies that are:

a. Provided for the diagnosis, treatment, cure, or relief of a health condition, illness, injury, or disease; and, except for clinical trials covered under the Plan, not for experimental, investigational, or cosmetic purposes.

b. Necessary for and appropriate to the diagnosis, treatment, cure, or relief of a health condition, illness, injury, disease, or its symptoms.

c. Within generally accepted standards of medical care in the community.

d. Not solely for the convenience of the Plan member, the Plan member's family, or the provider.

For medically necessary services, the Plan or its representative may compare the cost-effectiveness of alternative services or supplies when determining which of the services or supplies will be covered and in what setting medically necessary services are eligible for coverage.

(17) National guard members. — Members of the North Carolina army and air national guard who are not eligible for any type of comprehensive group health insurance or other comprehensive group health benefit coverage and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six months. Members of the North Carolina army and air national guard include those who are actively serving in the national guard as well as former members of the national guard who have completed 20 or more years of service in the national guard but have not attained the minimum age to begin receipt of a uniformed service military retirement benefit. Comprehensive group health insurance

and other benefit coverage consists of inpatient and outpatient hospital and medical benefits, as well as other outpatient medical services, prescription drugs, medical supplies, and equipment that are generally available in the health insurance market. Comprehensive group health insurance and other benefit coverage includes Medicare benefits, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits, and other Uniformed Services benefits. North Carolina national guard units shall certify the eligibility of their members to the Plan for their participation in its benefits prior to enrollment.

(18) Optional alternative comprehensive benefit plans. — Comprehensive benefit plans administered by the Plan that differ in coverage, deductibles, coinsurance from the Standard Plan providing for 80/20 coinsurance, and that are alternative choices for coverage at the option of the Plan member.

(19) Plan or State Health Plan. — The North Carolina State Health Plan for Teachers and State Employees. Unless otherwise expressly provided, "Plan" includes all comprehensive health benefit plans offered under the Plan.

(20) Plan member. — A subscriber or dependent who is eligible and currently enrolled in the Plan and for whom a premium is paid.

(21) Plan year. — The period beginning July 1 and ending on June 30 of the succeeding calendar year.

(22) Predecessor plan. — The Hospital and Medical Benefits for the Teachers' and State Employees' Retirement System of the State of North Carolina and the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

(23) Rescue squad workers. — Eligible rescue squad workers as defined by the provisions of G.S. 58-86-30 who belong to a rescue or emergency medical services squad as defined by the same statute and who are not eligible for any type of comprehensive group health insurance or other comprehensive group health benefit coverage and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six months. Rescue squad workers shall also include members of the North Carolina Firemen and Rescue Squad Workers' Pension Fund who are in receipt of a monthly pension, who are not eligible for any type of comprehensive group health insurance or other comprehensive group health benefit coverage, and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six months. Comprehensive group health insurance and other benefit coverage consists of inpatient and outpatient hospital and medical benefits, as well as other outpatient medical services, prescription drugs, medical supplies, and equipment that are generally available in the health insurance market. For purposes of this subdivision, comprehensive group health insurance and other benefit coverage includes Medicare benefits, CHAMPUS benefits, and other Uniformed Services benefits. North Carolina rescue or emergency medical services squads or their respective governing bodies shall certify the eligibility of their rescue squad workers to the Plan for their participation in its benefits prior to enrollment.

(24) Retired employee (retiree). — Retired teachers, State employees, and members of the General Assembly who are receiving monthly retirement benefits from any retirement system supported in whole or in part by contributions of the State of North Carolina, so long as the retiree is enrolled.

(25) Subscriber. — A Plan member who is not a dependent.
(26) Surviving spouse. — The spouse of a deceased Plan member who is eligible for Plan enrollment. (2008-168, s. 3(e).)

Editor's Note. — This section was codified as G.S. 135-39.13 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(e), effective July 1, 2008. It has been renumbered as G.S. 135-45.1 at the direction of the Revisor of Statutes.

Session Laws 2008-168, s. 7, made this section effective July 1, 2008.

§ 135-45.2. Eligibility.

(a) Noncontributory Coverage. — The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 135-45.4:

(1) All permanent full-time employees of an employing unit who meet the following conditions:
  a. Paid from general or special State funds, or
  b. Paid from non-State funds and in a group for which his or her employing unit has agreed to provide coverage.

  Employees of State agencies, departments, institutions, boards, and commissions not otherwise covered by the Plan who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision.

(2) Permanent hourly employees as defined in G.S. 126-5(c4) who work at least one-half of the workdays of each pay period.

(3) Retired teachers, State employees, members of the General Assembly, and retired State law enforcement officers who retired under the Law Enforcement Officers' Retirement System prior to January 1, 1985. Except as otherwise provided in this subdivision, on and after January 1, 1988, a retiring employee or retiree must have completed at least five years of contributory retirement service with an employing unit prior to retirement from any State-supported retirement system in order to be eligible for group benefits under this Part as a retired employee or retiree. For employees first hired on and after October 1, 2006, and members of the General Assembly first taking office on and after February 1, 2007, future coverage as retired employees and retired members of the General Assembly is subject to a requirement that the future retiree have 20 or more years of retirement service credit in order to be covered by the provisions of this subdivision.

(4) Surviving spouses of:
  a. Deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and
  b. Deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs, provided the death of the former plan member occurred prior to October 1, 1986.

(5) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.

(6) Members of the General Assembly.

(7) Notwithstanding the provisions of subsection (e) of this section, employees on official leave of absence while completing a full-time program in school administration in an approved program as a

Principal Fellow in accordance with Article 5C of Chapter 116 of the General Statutes.

(8) Notwithstanding the provisions of G.S. G.S. 135-45.12 employees formerly covered by the provisions of this section, other than retired employees, who have been employed for 12 or more months by an employing unit and whose jobs are eliminated because of a reduction, in total or in part, in the funds used to support the job or its responsibilities, provided the employees were covered by the Plan at the time of separation from service resulting from a job elimination. Employees covered by this subsection shall be covered for a period of up to 12 months following a separation from service because of a job elimination.

(9) Any member enrolled pursuant to subdivision (1) or (2) of this subsection who is on approved leave of absence with pay or receiving workers' compensation.

(10) Employees on approved Family and Medical Leave.

(b) Partially Contributory. — The following persons are eligible for coverage under the Plan on a partially contributory basis subject to the provisions of G.S. 135-45.4:

(1) A school employee in a job-sharing position as defined in G.S. 135-45.4. If these employees elect to participate in the Plan, the employing unit shall pay fifty percent (50%) of the Plan's total noncontributory premiums. Individual employees shall pay the balance of the total noncontributory premiums not paid by the employing unit.

(2) Subject to the provisions of G.S. 135-45.4, employees and members of the General Assembly with 10 but less than 20 years of retirement service credit provided the employees were first hired on or after October 1, 2006, and the members first took office on or after February 1, 2007. For such future retirees, the State shall pay fifty percent (50%) of the Plan's total noncontributory premiums. Individual retirees shall pay the balance of the total noncontributory premiums not paid by the State.

(c) Fully Contributory. — The following person shall be eligible for coverage under the Plan, on a fully contributory basis, subject to the provisions of G.S. 135-45.4:

(1) Former members of the General Assembly who enroll before October 1, 1986.

(2) For enrollments after September 30, 1986, former members of the General Assembly if covered under the Plan at termination of membership in the General Assembly. To be eligible for coverage as a former member of the General Assembly, application must be made within 30 days of the end of the term of office. Only members of the General Assembly covered by the Plan at the end of the term of office are eligible. If application is not made within the specified time period, the member forfeits eligibility.

(3) Surviving spouses of deceased former members of the General Assembly who enroll before October 1, 1986.

(4) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.

(5) For enrollments after September 30, 1986, surviving spouses of deceased former members of the General Assembly, if covered under the Plan at the time of death of the former member of the General Assembly.

(6) All permanent part-time employees (designated as half-time or more) of an employing unit who meets the conditions outlined in subdivision

(a)(1)a. above, and who are not covered by the provisions of G.S. 135-45.2(a)(1).

(7) The spouses and eligible dependent children of enrolled teachers, State employees, retirees, former members of the General Assembly, former employees covered by the provisions of G.S. 135-45.2(a)(8), Disability Income Plan beneficiaries, enrolled continuation members, and members of the General Assembly. Spouses of surviving dependents are not eligible, nor are dependent children if they were not covered at the time of the member's death. Surviving spouses may cover their dependent children provided the children were enrolled at the time of the member's death or enroll within 90 days of the member's death.

(8) Blind persons licensed by the State to operate vending facilities under contract with the Department of Health and Human Services, Division of Services for the Blind and its successors, who are:
  a. Operating such a vending facility;
  b. Former operators of such a vending facility whose service as an operator would have made these operators eligible for an early or service retirement allowance under Article 1 of this Chapter had they been members of the Retirement System; and
  c. Former operators of such a vending facility who attain five or more years of service as operators and who become eligible for and receive a disability benefit under the Social Security Act upon cessation of service as an operator.

Spouses, dependent children, surviving spouses, and surviving dependent children of such members are not eligible for coverage.

(9) Surviving spouses of deceased retirees and surviving spouses of deceased teachers, State employees, and members of the General Assembly provided the death of the former Plan member occurred after September 30, 1986, and the surviving spouse was covered under the Plan at the time of death.

(10) Any eligible dependent child of the deceased retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary, provided the child was covered at the time of death of the retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary, (or was in posse at the time and is covered at birth under this Part), or was covered under the Plan on September 30, 1986. An eligible surviving dependent child can remain covered until age 19, or age 26 if a full-time student, or indefinitely if certified as incapacitated under G.S. 135-45.1(5)b.

(11) Retired teachers, State employees, and members of the General Assembly with less than 10 years of retirement service credit, provided the teachers and State employees were first hired on or after October 1, 2006, and the members first took office on or after February 1, 2007.

(12) Notwithstanding the provisions of G.S. 135-45.11 former employees covered by the provisions of G.S. 135-45.2 and their spouses and eligible dependent children who were covered by the Plan at the time of the former employees' separation from service pursuant to G.S. 135-45.2, following expiration of the former employees' coverage provided by G.S. 135-45.2. Election of coverage under this subdivision shall be made within 90 days after the termination of coverage provided under G.S. 135-45.2.

(13) Firefighters, rescue squad workers, and members of the national guard, their eligible spouses, and eligible dependent children.

(d) A foster child is covered as a dependent child (i) if living in a regular parent-child relationship with the expectation that the employee will continue to rear the child into adulthood, (ii) if at the time of enrollment, or at the time a foster child relationship is established, whichever occurs first, the employee applies for coverage for such child and submits evidence of a bona fide foster child relationship, identifying the foster child by name and setting forth all relevant aspects of the relationship, (iii) if the claims processor accepts the foster child as a participant through a separate written document identifying the foster child by name and specifically recognizing the foster child relationship, and (iv) if at the time a claim is incurred, the foster child relationship, as identified by the employee, continues to exist. Children placed in a home by a welfare agency which obtains control of, and provides for maintenance of the child, are not eligible participants.

Coverage of a dependent child may be extended beyond the 19th birthday under the following conditions:

(1) If the dependent is a full-time student, aged 19 years and one month through the end of the month following the student's 26th birthday, who is pursuing a course of study that represents at least the normal workload of a full-time student at a school or college accredited by the state of jurisdiction.

(2) The dependent is physically or mentally incapacitated to the extent that he or she is incapable of earning a living and (i) such handicap developed or began to develop before the dependent's 19th birthday, or (ii) such handicap developed or began to develop before the dependent's 26th birthday if the dependent was covered by the Plan in accordance with G.S. 135-45.2(5)a.

(e) No person shall be eligible for coverage as a dependent if eligible as an employee or retired employee, except when a spouse is eligible on a fully contributory basis. In addition, no person shall be eligible for coverage as a dependent of more than one employee or retired employee at the same time.

(f) Former employees who are receiving disability retirement benefits or disability income benefits pursuant to Article 6 of Chapter 135 of the General Statutes, provided the former employee has at least five years of retirement membership service, shall be eligible for the benefit provisions of this Plan, as set forth in this Part, on a noncontributory basis. Such coverage shall terminate as of the end of the month in which such former employee is no longer eligible for disability retirement benefits or disability income benefits pursuant to Article 6 of this Chapter.

(g) Employees on official leave of absence without pay may elect to continue this group coverage at group cost provided that they pay the full employee and employer contribution through the employing unit during the leave period.

(h) For the support of the benefits made available to any member vested at the time of retirement, their spouses or surviving spouses, and the surviving spouses of employees who are receiving a survivor's alternate benefit under G.S. 135-5(m) of those associations listed in G.S. 135-27(a), licensing and examining boards under G.S. 135-1.1, the North Carolina State Art Society, Inc., and the North Carolina Symphony Society, Inc., each association, organization or board shall pay to the Plan the full cost of providing these benefits under this section as determined by the Board of Trustees of the State Health Plan for Teachers and State Employees. In addition, each association, organization or board shall pay to the Plan an amount equal to the cost of the benefits provided under this section to presently retired members of each association, organization or board since such benefits became available at no cost to the retired member. This subsection applies only to those individuals employed prior to July 1, 1983, as provided in G.S. 135-27(d).

(i) An eligible surviving spouse and any eligible surviving dependent child of a deceased retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary shall be eligible for group benefits under this section without waiting periods for preexisting conditions provided coverage is elected within 90 days after the death of the former plan member. Coverage may be elected at a later time, but will be subject to the 12-month waiting period for preexisting conditions and will be effective the first day of the month following receipt of the application.

(j) No person shall be eligible for coverage as an employee or retired employee or as a dependent of an employee or retired employee upon a finding by the Executive Administrator or Board of Trustees or by a court of competent jurisdiction that the employee or dependent knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan. The Executive Administrator and Board of Trustees may make an exception to the provisions of this subsection when persons subject to this subsection have had a cessation of coverage for a period of five years and have made a full and complete restitution to the Plan for all fraudulent claim amounts. Nothing in this subsection shall be construed to obligate the Executive Administrator and Board of Trustees to make an exception as allowed for under this subsection.

(k) Any employee receiving benefits pursuant to Article 6 of this Chapter when the employee has less than five years of retirement membership service, or an employee on leave without pay due to illness or injury for up to 12 months, is entitled to continued coverage under the Plan for the employee and any eligible dependents by paying one hundred percent (100%) of the cost. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 499; c. 761, ss. 252-255; c. 867, s. 4; c. 922, s. 5; 1985, c. 400, ss. 5, 6; 1985 (Reg. Sess., 1986), c. 1020, s. 29(a)-(*l*); 1987, c. 738, ss. 29(n), 36(a), 36(b); c. 809, ss. 3, 4; c. 857, ss. 11(a), 11.1, 11.2, 12; 1989, c. 752, s. 22(e), (f); 1989 (Reg. Sess., 1990), c. 1074, s. 22(a); 1993, c. 321, s. 85(b); 1995, c. 278, s. 1; c. 507, ss. 7.21(a)-(c), 7.28(a)-(c); 1997-443, s. 11A.118(a); 1997-512, ss. 17, 19-27; 1999-237, s. 28.29(f); 2000-141, ss. 6(a), (b); 2000-184, ss. 1(a),(b), 3; 2001-487, s. 86(a); 2002-174, s. 4; 2003-358, s. 4; 2004-124, s. 31.21(b); 2004-199, s. 34(b); 2005-276, s. 29.31(e); 2006-174, ss. 1, 2, 3; 2007-323, s. 28.22A(g1), (o); 2007-345, s. 12; 2008-168, ss. 1(a), 3(a), (f); 2008-194, s. 6(b).)

Editor's Note. — This section was formerly codified as G.S. 135-40.2. It was recodified as G.S. 135-39.14 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(f), effective July 1, 2008. It has been renumbered as G.S. 135-45.2 at the direction of the Revisor of Statutes.

Session Laws 2008-168, s. 3(f), inserted "G.S." following "Notwithstanding the provisions of G.S." and failed to delete the preceding "G.S." in subdivision (a)(8). The text has been set out as it appeared in the 2008 act.

Effect of Amendments. —

Session Laws 2008-168, s. 3(f), effective July 1, 2008, rewrote the section.

Session Laws 2008-194, s. 6(b), effective August 8, 2008, inserted "State" preceding "Art Society, Inc." in subsection (f).

§ 135-45.3. Enrollment.

(a) Except as otherwise required by applicable federal law, new employees must be given the opportunity to enroll or decline enrollment for themselves and their dependents within 30 days from the date of employment or from first becoming eligible on a noncontributory basis. Coverage may become effective on the first day of the month following date of entry on payroll or on the first day of the following month. New employees not enrolling themselves and their dependents within 30 days, or not adding dependents when first eligible as provided herein may enroll on the first day of any month but will be subject to a 12-month waiting period for preexisting health conditions, except for employees who elect to change their coverage in accordance with rules established by the Executive Administrator and Board of Trustees for optional or alternative plans available under the Plan. Children born to covered employees having coverage type (2) or (3), as outlined in G.S. 135-45.4(d) shall be automatically covered at the time of birth without any waiting period for preexisting health conditions. Children born to covered employees having coverage type (1) shall be automatically covered at birth without any waiting period for preexisting health conditions so long as the claims processor receives notification within 30 days of the date of birth that the employee desires to change from coverage (1) to coverage type (2) or (3), provided that the employee pays any additional premium required by the coverage type selected retroactive to the first day of the month in which the child was born.

(b) Newly acquired dependents (spouse/child) enrolled within 30 days of becoming an eligible dependent will not be subject to the 12-month waiting period for preexisting conditions. A dependent can become qualified due to marriage, adoption, entering a foster child relationship, due to the divorce of a dependent child or the death of the spouse of a dependent child, and at the beginning of each legislative session (applies only to enrolled legislators). Effective date for newly acquired dependents if application was made within the 30 days can be the first day of the following month. Effective date for an adopted child can be date of adoption, or date of placement in the adoptive parents' home, or the first of the month following the date of adoption or placement. Firefighters, rescue squad workers, and members of the national guard, and their eligible dependents, are subject to the same terms and conditions as are new employees and their dependents covered by this subdivision. Enrollments in these circumstances must occur within 30 days of eligibility to enroll. (2008-168, s. 3(g).)

Editor's Note. — This section was codified as G.S. 135-39.15 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(g), effective July 1, 2008. It has been renumbered as G.S. 135-45.3 at the direction of the Revisor of Statutes.

Session Laws 2008-168, s. 7, made this section effective July 1, 2008.

§ 135-45.4. Effective dates of coverage.

(a) Employees and Retired Employees. —

(1) Employees and retired employees covered under the Predecessor Plan will continue to be covered, subject to the terms hereof.

(2) New employees may apply for coverage to be effective on the first day of the month following employment, or on a like date the following month if the employee has enrolled.

(3) Employees not enrolling or adding dependents when first eligible in accordance with G.S. 135-45.3 may enroll later on the first of any following month but will be subject to a 12-month waiting period for a preexisting health condition, except employees who elect to change their coverage in accordance with rules adopted by the Executive Administrator and Board of Trustees for optional alternative plans offered under the Plan.

(4) Members of the General Assembly, beginning with the 1985 Session, shall become first eligible with the convening of each Session of the General Assembly, regardless of a Member's service during previous Sessions. Members and their dependents enrolled when first eligible after the convening of each Session of the General Assembly will not be subject to any waiting periods for preexisting health conditions. Members of the 1983 Session of the General Assembly, not already enrolled, shall be eligible to enroll themselves and their dependents on or before October 1, 1983, without being subject to any waiting periods for preexisting health conditions.

(b) Waiting Periods and Preexisting Conditions. —

(1) New employees and dependents enrolling when first eligible are subject to no waiting period for preexisting conditions under the Plan.

(2) Employees not enrolling or not adding dependents when first eligible may enroll later on the first of any following month, but will be subject to a twelve-month waiting period for preexisting conditions except as provided in subdivision (a)(3) of this section.

(3) Retiring employees and dependents enrolled when first eligible after an employee's retirement are subject to no waiting period for preexisting conditions under the Plan. Retiring employees not enrolled or not adding dependents when first eligible after an employee's retirement may enroll later on the first of any following month, but will be subject to a 12-month waiting period for preexisting conditions except as provided in subdivision (a)(3) of this section.

(4) Employees and dependents enrolling or reenrolling within 12 months after a termination of enrollment or employment that were not enrolled at the time of this previous termination, regardless of the employing units involved, shall not be considered as newly-eligible employees or dependents for the purposes of waiting periods and preexisting conditions. Employees and dependents transferring from optional prepaid alternative plans available under the Plan; employees and dependents immediately returning to service from an employing unit's approved periods of leave without pay for illness, injury, educational improvement, workers' compensation, parental duties, or for military reasons; employees and dependents immediately returning to service from a reduction in an employing unit's work force; retiring employees and dependents reenrolled in accordance with G.S. 135-45.4(b)(3); formerly-enrolled dependents reenrolling as eligible employees; formerly-enrolled employees reenrolling as eligible dependents; and employees and dependents reenrolled without waiting periods and preexisting conditions under specific rules adopted by the Executive Administrator and Board of Trustees in the best interests of the Plan shall not be considered reenrollments for the purpose of this subdivision. Furthermore, employees accepting permanent, full-time appointments who had previously worked in a part-time or temporary position and their qualified dependents shall not be covered by waiting periods and preexisting conditions under this division provided enrollment as a permanent, full-time employee is made when the employee and his dependents are first eligible to enroll.

(5) To administer the 12-month waiting period for preexisting conditions under this Article, the Plan must give credit against the 12-month period for the time that a person was covered under a previous plan if the previous plan's coverage was continuous to a date not more than 63 days before the effective date of coverage. As used in this subdivision, a "previous plan" means any policy, certificate, contract, or any other arrangement provided by any accident and health insurer, any hospital or medical service corporation, any health maintenance organization, any preferred provider organization, any multiple employer welfare arrangement, any self-insured health benefit arrangement, any governmental health benefit or health care plan or program, or any other health benefit arrangement.

(c) Dependents of Employees and Retired Employees. —

(1) Dependents of employees and retired employees who have family coverage under the Predecessor Plan will continue to be covered subject to the terms hereof.

(2) Employees who have dependents may apply for family coverage at the time they enroll as provided in subdivisions (a)(2) and (a)(3) of this

section and such dependents will be covered under the Plan beginning the same date as such employees.

(3) Employees and retired employees may change from one category of coverage to a different category of coverage without a waiting period for preexisting conditions, and, as applicable, dependents will be covered under the Plan the first of the month or the first of the second month following the dependent's eligibility for coverage, provided written application is submitted to the Health Benefits Representative within 30 days of becoming eligible.

(4) Employees or retired employees who wish to change to employee only coverage shall give written notice to their Health Benefits Representative within 30 days after any change in the status of dependents, (resulting from death, divorce, etc.) that requires a change in contract category. The effective date will be the first of the month following the dependent's ineligibility event. If notification was not made within the 30 days following the dependent's ineligibility event, the dependent will be retroactively removed the first of the month following the dependent's ineligibility event, and the coverage category change will be the first of the month following written notification, except in cases of death, in which case the coverage category change will be made retroactive to the first of the month following the death.

(5) Employees not adding dependents when first eligible may enroll later on the first of any following month, but dependents will be subject to a 12-month waiting period for preexisting health conditions except as provided in subdivision (a)(3) of this section.

(6) Employees or retired employees who wish to change to employee only coverage even though their dependents continue to be eligible, shall give written notification to their Health Benefits Representative. Except as otherwise required by applicable federal law, the date of this category change will be the first of the month following written notification or any first of the month thereafter as desired by the employee.

(7) The effective date for newborns or adopted children will be date of birth, date of adoption, or placement with adoptive parent provided member is currently covered under employee and family or employee and child coverage. If the member wishes to add a newborn or adopted child and is currently enrolled in employee only coverage, the member must submit application for coverage and a coverage type change within 30 days of the child's birth or date of adoption or placement. Effective date for the coverage category change is the first of the month in which the child is born, adopted, or placed. Adopted children may also be covered the first of the month following placement or adoption.

(d) Categories of Coverage Available. — There are four categories of coverage which an employee or retiree may elect.

(1) Employee Only. — Covers enrolled employees only. Maternity benefits are provided to employee only.

(2) Employee and Child. — Covers enrolled employee and all eligible dependent children. Maternity benefits are provided to the employee only.

(3) Employee and Family. — Covers employee and spouse, and all eligible dependent children. Maternity benefits are provided to employee or enrolled spouse.

(4) Employee and spouse. Covers employee and spouse only. Maternity benefits are provided to the employee or the employee's enrolled spouse.

(e) Notwithstanding any other provision of this section, no coverage under the Plan shall become effective prior to the payment of premiums required by the Plan.

(f) Firefighters, rescue squad workers, and members of the national guard are subject to the same terms and conditions of this section as are employees. Eligible dependents of firefighters, rescue squad workers, and members of the national guard are subject to the same terms and conditions of this section as are dependents of employees.

(g) Different categories of coverage may be offered for optional alternative plans or programs.

(h) If any provision of this section is in conflict with applicable federal law, federal law shall control to the extent of the conflict. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 499; c. 761, ss. 252-255; c. 867, s. 4; c. 922, s. 5; 1985, c. 400, ss. 5, 6; 1985 (Reg. Sess., 1986), c. 1020, ss. 5(b), 20; 1987, c. 857, s. 13; 1991, c. 427, ss. 10-12; 1996, 2nd Ex. Sess., c. 18, s. 28.23(b); 1997-512, ss. 28-31, 40; 1999-237, s. 28.29(g); 2007-323, s. 28.22A(h); 2008-168, ss. 1(a), 3(a), (h).)

Editor's Note. — This section was formerly codified as G.S. 135-40.3. It was recodified as G.S. 135-39.16 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(h), effective July 1, 2008. It has been renumbered as G.S. 135-45.4 at the direction of the Revisor of Statutes.

This section was amended by Session Laws 2008-168, s. 3(h), in the coded bill drafting format provided by G.S. 120-20.1. In the second sentence of subdivision (b)(4) the word "prepaid" following "transferring from optional" was not struck through. Subdivision (b)(4) has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 2008-168, s. 3(h), effective July 1, 2008, rewrote the section.

§ 135-45.5. Optional participation for charter schools operated by private nonprofit corporations.

(a) The board of directors of each charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Plan in accordance with this Article. This election shall be in writing, shall be made no later than 30 days after this section becomes law, and shall be filed with the Executive Administrator and Board of Trustees and with the State Board of Education. For each charter school employee who is employed on or before the date the board makes the election, membership in the Plan is effective as of the date the board makes the election. For each charter school employee who is employed after the date the board makes the election, membership in the Plan is effective as of the date of that employee's entry into eligible service. This subsection applies only to charter schools that received State Board of Education approval under G.S. 115C-238.29D in 1997 or 1998.

(b) No later than 30 days after both parties have signed the written charter under G.S. 115C-238.29E, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Plan in accordance with this Article. This election shall be in writing and filed with the Executive Administrator, the Board of Trustees, and the State Board of Education. This election is effective for each charter school employee as of the date of that employee's entry into eligible service. This subsection applies to charter schools that receive State Board of Education approval under G.S. 115C-238.29D after 1998.

(c) A board's election to become a participating employer in the Plan under this section is irrevocable and shall require all eligible employees of the charter school to participate.

(d) If a charter school's board of directors does not elect to become a participating employer in the Plan under this section, that school's employees and the dependents of those employees are not eligible for any benefits under the Plan on account of employment with a charter school.

(e) The board of directors of each charter school shall notify each of its employees as to whether the board elected to become a participating employer in the Plan under this section. This notification shall be in writing and shall be provided within 30 days of the board's election or at the time an initial offer for employment is made, whichever occurs last. If the board did not elect to become a participating employer in the Plan, the notice shall include a statement that the employee shall have no legal recourse against the board or the State for any possible benefit under the Plan. The employee shall provide written acknowledgment of the employee's receipt of the notification under this subsection. (1998-212, s. 9.14A(e); 2008-168, ss. 1(a), 3(a), (i).)

Editor's Note. — This section was formerly codified as G.S. 135-40.3A. It was recodified as G.S. 135-39.17 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(i), effective July 1, 2008. It has been renumbered as G.S. 135-45.5 at the direction of the Revisor of Statutes.

§ 135-45.6. Benefits not subject to deductible or coinsurance.

(a) Immunizations. — The Plan will pay one hundred percent (100%) of allowable medical charges for immunizations for the prevention of contagious diseases as generally accepted medical practices would dictate when directed by a credentialed provider as determined by the claims processor.

(b) Prescription Drugs. — The Plan's allowable charges for prescription legend drugs to be used outside of a hospital or skilled nursing facility shall be as determined by the Plan's Executive Administrator and Board of Trustees, which determinations are not subject to appeal under Article 3 of Chapter 150B of the General Statutes.

The Plan will pay allowable charges for each outpatient prescription drug less a copayment to be paid by each covered individual equal to the following amounts: pharmacy charges up to ten dollars ($10.00) for each generic prescription, thirty dollars ($30.00) for each preferred branded prescription, and forty dollars ($40.00) for each preferred branded prescription with a generic equivalent drug, and fifty dollars ($50.00) for each nonpreferred branded or generic prescription. These co-payments apply to all optional alternative plans available under the Plan.

Allowable charges shall not be greater than a pharmacy's usual and customary charge to the general public for a particular prescription. Prescriptions shall be for no more than a 34-day supply for the purposes of the copayments paid by each covered individual. By accepting the copayments and any remaining allowable charges provided by this subsection, pharmacies shall not balance bill an individual covered by the Plan. A prescription legend drug is defined as an article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription." Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though a prescription is not required. The Plan may use a pharmacy benefit manager to help manage the Plan's outpatient prescription drug coverage. In managing the Plan's outpatient prescription drug benefits, the Plan and its pharmacy benefit manager shall not provide coverage for sexual dysfunction, growth hormone, antiwrinkle, weight loss, and hair growth drugs unless such coverage is medically necessary to the health of the member. The Plan and its pharmacy benefit manager shall not provide coverage for growth hormone and weight loss drugs and antifungal drugs for the treatment of nail fungus and botulinium toxin without approval in advance by the pharmacy benefit manager. Any formulary used by the Plan's Executive Administrator and pharmacy benefit manager shall be an open formulary. Plan members shall not be assessed more than two thousand five hundred dollars ($2,500) per person per fiscal year in copayments required by this subsection. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 7; 1985, c. 192, ss. 5, 9, 12; c. 732, ss. 16-18; 1985 (Reg. Sess., 1986), c. 1020, ss. 10, 20; 1987, c. 857, s. 14; 1991, c. 427, ss. 13, 20; 1995, c. 507, s. 7.24(a); 1999-237, s. 28.28(b); 2000-141, s. 1; 2000-184, s. 2; 2001-253, ss. 1(d), 1(e); 2003-186, s. 5(a); 2005-276, s. 29.31(a); 2006-249, s. 2(a); 2007-323, s. 28.22A(a); 2008-168, ss. 1(a), 3(a), (j).)

Editor's Note. — This section was formerly codified as G.S. 135-40.5. It was recodified as G.S. 135-39.18 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(j), effective July 1, 2008. It has been renumbered as G.S. 135-45.6 at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 2008-168, s. 3(j), effective July 1, 2008, redesignated subsections (f) and (g) as subsections (a) and (b), and in present subsection (a), inserted "medical" following "allowable" and substituted "a credentialed provider as determined by the claims processor" for "an attending physician"; in present subsection (b), in the first paragraph, substituted "shall be as" for "are to be" and added "which determinations are not subject to appeal under Article 3 of Chapter 150B of the General Statutes", substituted "all optional alternative plans available under the Plan" for "the Plan's optional programs" in the last sentence of the second paragraph, and substituted "sexual" for "erectile" in the eighth sentence of the third paragraph.

§ 135-45.7. Prior approval procedures.

The Executive Administrator and Board of Trustees may establish procedures to require prior medical approval and may implement the procedures after consultation with the Committee on Employee Hospital and Medical Benefits. (2008-168, s. 3(*l*).)

Editor's Note. — This section was codified as G.S. 135-39.19 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(*l*), effective July 1, 2008. It has been renumbered as G.S. 135-45.7 at the direction of the Revisor of Statutes.

Session Laws 2008-168, s. 7, made this section effective July 1, 2008.

§ 135-45.8. General limitations and exclusions.

The following shall in no event be considered covered expenses nor will benefits described in G.S. 135-45.6 through G.S. 135-45.11 be payable for:

(1) Charges for any services rendered to a person prior to the date coverage under this Plan becomes effective with respect to such person.

(2) Charges for care in a nursing home, adult care home, convalescent home, or in any other facility or location for custodial or for rest cures.

(3) Charges to the extent paid, or which the individual is entitled to have paid, or to obtain without cost, in accordance with any government laws or regulations except Medicare. If a charge is made to any such person which he or she is legally required to pay, any benefits under this Plan will be computed in accordance with its provisions, taking into account only such charge. "Any government" includes the federal, State, provincial or local government, or any political subdivision thereof, of the United States, Canada or any other country.

(4) Charges for services rendered in connection with any occupational injury or disease arising out of and in the course of employment with any employer, if (i) the employer furnishes, pays for or provides reimbursement for such charges, or (ii) the employer makes a settle-

ment payment for such charges, or (iii) the person incurring such charges waives or fails to assert his or her rights respecting such charges.

(5) Charges for any care, treatment, services or supplies other than those which are certified by a physician who is attending the individual as being required for the medically necessary treatment of the injury or disease and are deemed medically necessary and appropriate for the treatment of the injury or disease by the Executive Administrator and Board of Trustees upon the advice of the Claims Processor. This subdivision shall not be construed, however, to require certification by an attending physician for a service provided by an advanced practice registered nurse acting within the nurse's lawful scope of practice.

(6) Charges for any services rendered as a result of injury or sickness due to an act of war, declared or undeclared, which act shall have occurred after the effective date of a person's coverage under the Plan.

(7) Charges for personal services such as barber services, guest meals, radio and TV rentals, etc.

(8) Charges for any services with respect to which there is no legal obligation to pay. For the purposes of this item, any charge which exceeds the charge that would have been made if a person were not covered under this Plan shall, to the extent of such excess, be treated as a charge for which there is no legal obligation to pay; and any charge made by any person for anything which is normally or customarily furnished by such person without payment from the recipient or user thereof shall also be treated as a charge for which there is no legal obligation to pay.

(9) Charges during a continuous hospital confinement which commenced prior to the effective date of the person's coverage under this Plan.

(10) Charges in excess of either the allowed amount or the reasonable amount, or the fair and reasonable value of the services or supply which gives rise to the expense; provided that in each instance the extent that a particular charge is usual, customary and reasonable or fair and reasonable shall be measured and determined by comparing the charge with charges made for similar things to individuals of similar age, sex, income and medical condition in the locality concerned, and the result of such determination shall constitute the maximum allowable as covered medical expenses unless the Claims Processor finds that considerations of fairness and equity in a particular set of circumstances require that greater or lesser charges be considered as covered medical expenses in that set of circumstances.

(11) Charges for or in connection with any dental work or dental treatment except to the extent that such work or treatment is specifically provided for under the Plan. Excluded is payment for surgical benefits for tooth replacement, such as crowns, bridges or dentures; orthodontic care; filling of teeth; extraction of teeth (whether or not impacted); root canal therapy; removal of root tips from teeth; treatment for tooth decay, inflammation of gingiva, or surgical procedures on diseased gingiva or other periodontal surgery; repositioning soft tissue, reshaping bone, and removal of bony projections from the ridges preparatory to fitting of dentures; removal of cysts incidental to removal of root tips from teeth and extraction of teeth; or other dental procedures involving teeth and their bones or tissue supporting structure.

(12) Charges incurred for any medical observations or diagnostic study when no disease or injury is revealed, unless proof satisfactory to the Claims Processor is furnished that (i) the claim is in order in all other respects, (ii) the covered individual had a definite symptomatic

condition of disease or injury other than hypochondria, and (iii) the medical observation and diagnostic studies concerned were not undertaken as a matter of routine physical examination or health checkup.

(13) Charges for eyeglasses or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia persons) and hearing aids or examinations for the prescription or fitting thereof.

(14) Charges for cosmetic surgery or treatment except that charges for cosmetic surgery or treatment required for correction of damage caused by accidental injury sustained by the covered individual while coverage under this plan is in force on his or her account or to correct congenital deformities or anomalies shall not be excluded if they otherwise qualify as covered medical expenses. Reconstructive breast surgery following mastectomy, as those terms are defined in G.S. 58-51-62, is not "cosmetic surgery or treatment" for purposes of this section.

(15) Admissions for diagnostic tests or procedures which could be, and generally are, performed on an outpatient basis and inpatient services or supplies which are not consistent with the diagnosis, for which admitted.

(16) Costs denied by the Claims Processor as part of its overall program of claim review and cost containment.

(17) Charges in excess of negotiated rates allowed for preferred providers of institutional and professional medical care and services, when such preferred providers are reasonably available to provide institutional and professional medical care.

(18) If a covered service becomes excluded from coverage under the Plan, the Executive Administrator and Claims Processor may, in the event of exceptional situations creating undue hardships or adverse medical conditions, allow persons enrolled in the Plan to remain covered by the Plan's previous coverage for up to three months after the effective date of the change in coverage, provided the persons so enrolled had been undergoing a continuous plan of specific treatment initiated within three months prior to the effective date of the change in coverage.

(19) Charges for services unless a claim is filed within 18 months from the date of service.

(20) Any service, treatment, facility, equipment, drug, supply, or procedure that is experimental or investigational as defined by the Plan. Clinical trial phases III and IV are covered by the Plan as is clinical trial phase II when approved by the Plan. Regardless of the type of trial phases covered by the Plan, all covered trials must involve the treatment of life-threatening medical conditions, must be clearly superior to available noninvestigational treatment alternatives, and must have clinical and preclinical data that shows the trials will be at least as effective as noninvestigational alternatives. Trials must also involve determinations by treating physicians, relevant scientific data, and opinions of experts in relevant fields of medicine. Covered trials must be approved by the National Institutes of Health, a National Institutes of Health cooperative group or center, the U.S. Food and Drug Administration, the U.S. Department of Defense, or the U.S. Department of Veterans Affairs. The Plan may also cover clinical trials sponsored by other entities. Trials must also be approved by applicable qualified institutional review boards. All covered trials must be conducted in and by facilities and personnel that maintain a high level of expertise because of their training, experi-

ence, and volume of patients. To be covered by the Plan, patients participating in clinical trials must meet substantially all protocol requirements of the trials and exercise informed consent in the trials. Only medically necessary costs of health care services involved in treatments provided to patients for the purpose of the trials are covered by the Plan to the extent that such costs are not customarily funded by national agencies, commercial manufacturers, distributors, or other such providers. Clinical trial costs not covered by the Plan include, but are not limited to, the costs of services that are not health care services and costs associated with managing research in the trials. The Plan shall not exclude benefits for covered clinical trials if the proposed treatment is the only appropriate protocol for the condition being treated.

(21) Complications arising from noncovered services.

(22) Charges related to a noncovered service, even if the charges would have been covered if rendered in connection with a covered service.

(23) Charges for services covered by the long-term care benefit provisions of Part 4 of this Article.

(24) Charges disallowed by the Plan's pharmacy benefits manager. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 15, 21.4; 1985 (Reg. Sess., 1986), c. 1020, ss. 16, 20, 21, 25, 26; 1987, c. 282, s. 35; 1991, c. 427, ss. 16, 30, 40; 1993, c. 464, s. 7; 1995, c. 535, s. 29; 1997-456, s. 55.9; 1997-468, s. 6; 1997-512, ss. 4, 13; 1998-212, s. 28.29(c); 2000-141, s. 5; 2007-323, ss. 28.22A(j), (k); 2008-168, ss. 1(a), 3(a), (m), (v).)

Editor's Note. — This section was formerly codified as G.S. 135-40.7. It was recodified as G.S. 135-39.20 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(m), effective July 1, 2008. It has been renumbered as G.S. 135-45.8 at the direction of the Revisor of Statutes.

Session Laws 2008-168, s. 3(v), provides: "Effective July 1, 2008, the State Health Plan for Teachers and State Employees shall not limit the number of visits for covered services for physical therapy, occupational therapy, and speech therapy. This subsection expires July 1, 2009. Sections 28.22A(j) and (k) of S.L. 2007-323 are repealed." Session Laws 2007-323, s. 28.22A(j) and (k), had inserted a similar provision in former subsection (a) of this section with a June 30, 2009, sunset provision.

Effect of Amendments. —

Session Laws 2008-168, s. 3(m), effective July 1, 2008, rewrote the section.

§ 135-45.9. Special provisions for chemical dependency and mental health benefits.

(a) Except as otherwise provided in this section, benefits for the treatment of mental illness and chemical dependency are covered by the Plan and shall be subject to the same deductibles, durational limits, and coinsurance factors as are benefits for physical illness generally.

(b) Notwithstanding any other provision of this Part, the following necessary services for the care and treatment of chemical dependency and mental illness shall be covered as provided in this section: allowable institutional and professional charges for inpatient care, outpatient care, intensive outpatient program services, partial hospitalization treatment, and residential care and treatment:

(1) For mental illness treatment:
   a. Licensed psychiatric hospitals;
   b. Licensed psychiatric beds in licensed general hospitals;
   c. Licensed residential treatment facilities that have 24-hour on-site care provided by a registered nurse who is physically located at the facility at all times and that hold current accreditation by a

national accrediting body approved by the Plan's mental health case manager;
   - d. Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities or County Programs in accordance with G.S. 122C-141;
   - e. Licensed intensive outpatient treatment programs; and
   - f. Licensed partial hospitalization programs.
- (2) For chemical dependency treatment:
   - a. Licensed chemical dependency units in licensed psychiatric hospitals;
   - b. Licensed chemical dependency hospitals;
   - c. Licensed chemical dependency treatment facilities;
   - d. Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities or County Programs in accordance with G.S. 122C-141;
   - e. Licensed intensive outpatient treatment programs;
   - f. Licensed partial hospitalization programs; and
   - g. Medical detoxification facilities or units.

(c) Notwithstanding any other provisions of this Part, the following providers and no others may provide necessary care and treatment for mental health under this section:

- (1) Psychiatrists who have completed a residency in psychiatry approved by the American Council for Graduate Medical Education and who are licensed as medical doctors or doctors of osteopathy in the state in which they perform and services covered by the Plan;
- (2) Licensed doctors of psychology;
- (3) Clinical social workers licensed or certified by the North Carolina Social Work Certification and Licensure Board under Chapter 90B of the General Statutes.
- (4) Licensed professional counselors;
- (5) Certified clinical specialists in psychiatric and mental health nursing in accordance with Article 9A of Chapter 90 of the General Statutes;
- (6) Nurses working under the employment and direct supervision of such physicians, psychologists, or psychiatrists;
- (7) Licensed psychological associates;
- (8) Certified fee-based practicing pastoral counselors in accordance with Article 26 of Chapter 90 of the General Statutes;
- (9) Licensed physician assistants under the supervision of a licensed psychiatrist and acting pursuant to G.S. 90-18.1 or the applicable laws and rules of the area in which the physician assistant is licensed or certified; and
- (10) Licensed marriage and family therapists; [and]
- (11) Physicians licensed under Chapter 90 of the General Statutes and certified professionals with training and experience in the care and treatment for mental health and working under the direct supervision of such physicians.

(d) Notwithstanding any other provisions of this Part, the following providers and no others may provide necessary care and treatment for chemical dependency under this section:

- (1) The following providers with appropriate substance abuse training and experience in the field of alcohol and other drug abuse as determined by the mental health case manager, in facilities described in subdivision (b)(2) of this section, in day/night programs or outpatient treatment facilities licensed after July 1, 1984, under Article 2 of Chapter 122C of the General Statutes or in North Carolina area programs in substance abuse services are authorized to provide treatment for chemical dependency under this section:

a. Licensed physicians including, but not limited to, physicians who are certified in substance abuse by the American Society of Addiction Medicine (ASAM);
b. Licensed psychologists;
c. Psychiatrists;
d. Certified substance abuse counselors working under the direct supervision of such physicians, psychologists, or psychiatrists;
e. Licensed psychological associates;
f. Nurses working under the direct supervision of such physicians, psychologists, or psychiatrists;
g. Clinical social workers licensed or certified by the North Carolina Social Work Certification and Licensure Board under Chapter 90B of the General Statutes;
h. Certified clinical specialists in psychiatric and mental health nursing in accordance with Article 9A of Chapter 90 of the General Statutes;
i. Licensed professional counselors;
j. Certified fee-based practicing pastoral counselors in accordance with Article 26 of Chapter 90 of the General Statutes;
k. Substance abuse professionals certified under Article 5C of Chapter 90 of the General Statutes; and
l. Licensed marriage and family and therapists.

(2) The following providers with appropriate substance abuse training and experience in the field of alcohol and other drug abuse as determined by the mental health case manager are authorized to provide treatment for chemical dependency in outpatient practice settings:
a. Licensed physicians including, but not limited to, physicians who are certified in substance abuse by the American Society of Addiction Medicine (ASAM);
b. Licensed psychologists;
c. Psychiatrists;
d. Certified substance abuse counselors working under the direct supervision of such physicians, psychologists, or psychiatrists;
e. Licensed psychological associates;
f. Nurses working under the direct supervision of such physicians, psychologists, or psychiatrists;
g. Clinical social workers licensed or certified by the North Carolina Social Work Certification and Licensure Board under Chapter 90B of the General Statutes.
h. Certified clinical specialists in psychiatric and mental health nursing in accordance with Article 9A of Chapter 90 of the General Statutes;
i. Licensed professional counselors;
j. Certified fee-based practicing pastoral counselors in accordance with Article 26 of Chapter 90 of the General Statutes;
k. Licensed marriage and family and therapists;
l. Substance abuse professionals certified under Article 5C of Chapter 90 of the General Statutes; and
m. In the absence of meeting one of the criteria above, the Mental Health Case Manager could consider, on a case-by-case basis, a provider who supplies:
    1. Evidence of graduate education in the diagnosis and treatment of chemical dependency, and
    2. Supervised work experience in the diagnosis and treatment of chemical dependency (with supervision by an appropriately credentialed provider), and

3. Substantive past and current continuing education in the diagnosis and treatment of chemical dependency commensurate with one's profession.

(3) Physicians licensed under Chapter 90 of the General Statutes and certified professionals with training and experience in the care and treatment for chemical dependency and working under the direct supervision of such physicians.

Provided, however, that nothing in this subsection shall prohibit the Plan from requiring the most cost-effective treatment setting to be utilized by the person undergoing necessary care and treatment for chemical dependency.

(e) Benefits provided under this section shall be subject to a case management program for medical necessity and medical appropriateness consisting of (i) precertification of outpatient visits beyond 26 visits each Plan year, (ii) all electroconvulsive treatment, (iii) inpatient utilization review through preadmission and length-of-stay certification for nonemergency admissions to the following levels of care: inpatient units, partial hospitalization programs, residential treatment centers, chemical dependency detoxification and treatment programs, and intensive outpatient programs, (iv) length-of-stay certification of emergency inpatient admissions, and (v) a network of qualified, available providers of inpatient and outpatient psychiatric and chemical dependency treatment. Care which is not both medically necessary and medically appropriate will be noncertified, and benefits will be denied.

(f) For the purpose of this section, "emergency" is the sudden and unexpected onset of a condition manifesting itself by acute symptoms of sufficient severity that, in the absence of an immediate psychiatric or chemical dependency inpatient admission, could imminently result in injury or danger to self or others.

(g) As used in this section, the word "Plan" includes all optional and alternative plans, and programs available under the optional or alternative plans, in effect under the State Health Plan for Teachers and State Employees and its successor Plans. (1991, c. 427, s. 32; 1993, c. 464, ss. 3(a), 4; 1995, c. 157, s. 2; c. 406, s. 2; 1997-512, s. 14; 1999-186, s. 1; 1999-199, s. 3; 1999-210, s. 8; 1999-351, s. 7; 2001-258, s. 1; 2001-487, s. 40(n); 2003-368, ss. 2, 3; 2004-124, s. 31.28; 2007-323, ss. 28.22(f), (o); 2008-168, ss. 1(a), 3(a), (n).)

Editor's Note. — This section was formerly codified as G.S. 135-40.7B. It was recodified as G.S. 135-39.21 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(n), effective July 1, 2008. It has been renumbered as G.S. 135-45.9 at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2007-323, s. 28.22(o), substituted "State Health Plan for Teachers and State Employees" for "Teachers' and State Employees' Comprehensive Major Medical Plan" in subsection (g).

Session Laws 2008-168, s. 3(n), effective July 1, 2008, rewrote the section.

§ 135-45.10. Persons eligible for Medicare; optional participation in other Medicare products.

(a) Benefits payable for covered expenses under this Plan in G.S. 135-45.6 through G.S. 135-45.10 will be reduced by any benefits payable for the same covered expenses under Medicare, so that Medicare will be the primary carrier except where compliance with federal law specifies otherwise.

(b) For those participants eligible for Medicare, the Plan will be administered on a "carve out" basis. The provisions of the Plan are applied to the charges not paid by Medicare (Parts A & B). In other words, those charges not paid by Medicare would be subject to the deductible and coinsurance of the Plan just as if the charges not paid by Medicare were the total bill.

(c) For those individuals eligible for Part A (at no cost to them), benefits under this program will be reduced by the amounts to which the covered individuals would be entitled to under Parts A and B of Medicare, even if they choose not to enroll for Part B.

(d) Notwithstanding the foregoing provisions of this section or any other provisions of the Plan, the Executive Administrator and Board of Trustees may enter into negotiations with the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, in order to secure a more favorable coordination of the Plan's benefits with those provided by Medicare, including but not limited to, measures by which the Plan would provide Medicare benefits for all of its Medicare-eligible members in return for adequate payments from the federal government in providing such benefits. Should such negotiations result in an agreement favorable to the Plan and its Medicare-eligible members, the Executive Administrator and Board of Trustees may, after consultation with the Committee on Employee Hospital and Medical Benefits, implement such an agreement which shall supersede all other provisions of the Plan to the contrary related to its payment of claims for Medicare-eligible members.

(e) Notwithstanding subsections (a), (b), and (c) of this section, the Plan may offer an optional Medicare Advantage plan to a Medicare eligible Plan member. A Medicare Advantage plan offered by the Plan shall be an insured product offered through a private insurance carrier authorized by the Centers for Medicare and Medicaid Services to offer Medicare Advantage plans. A Medicare Advantage plan offered by the Plan shall not be a self-funded benefit plan underwritten by the State of North Carolina. Prescription drug benefits shall not be included in the benefits offered under a Medicare Advantage insurance product but shall continue to be provided by the Plan as authorized under G.S. 135-45.6.

An eligible Plan member may choose to enroll in a Medicare Advantage plan in lieu of any other benefit coverage plan offered under the Plan to Medicare eligible Plan members. A Medicare eligible Plan member must be enrolled in Medicare Part B to participate in an optional Medicare Advantage plan. A non-Medicare eligible dependent of a Medicare Advantage eligible Plan member may enroll on a fully contributory basis in benefit plans offered under the Plan to non-Medicare eligible Plan members. If an enrolled Plan member decides not to re-enroll in an optional Medicare Advantage plan during the Plan's annual enrollment period, the Plan member may at that time re-enroll in other benefit coverage offered by the Plan in accordance with the provisions of subsections (a), (b), and (c) of this section. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985 (Reg. Sess., 1986), c. 1020, s. 18; 1987, c. 857, s. 21; 1989, c. 752, s. 22(o); 2008-168, ss. 1(a), 3(a), (o).)

Editor's Note. — This section was formerly codified as G.S. 135-40.10. It was recodified as G.S. 135-39.22 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(o), effective July 1, 2008. It has been renumbered as G.S. 135-45.10 at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-168, s. 3(o), effective July 1, 2008, added "optional participation in other Medicare products" in the section heading; in subsection (a), substituted "G.S. 135-45.6" for "G.S. 135-40.5" and "G.S. 135-45.10" for "G.S. 135-40.9"; in subsection (b), substituted "Plan" for "State's plan" and made a minor stylistic change; substituted "Centers for Medicare and Medicaid Services" for " Health Care Financing Administration" in subsection (d); and added subsection (e).

§ 135-45.11. Cost-savings initiatives and incentive programs authorized.

(a) Cost-Saving Initiatives. — Coverage of Over-the-Counter Medications. — The Executive Administrator and Board of Trustees may authorize coverage for over-the-counter medications as recommended by the Plan's pharmacy and therapeutics committee. In approving for coverage one or more over-the-counter medications, the Executive Administrator and Board of Trustees shall ensure that each recommended over-the-counter medication has been analyzed to ensure medical effectiveness and Plan member safety. The analysis shall also address the financial impact on the Plan. The Executive Administrator and Board of Trustees may impose a co-payment to be paid by each covered individual for each packaged over-the-counter medication. The Executive Administrator and Board of Trustees may adopt policies establishing limits on the amount of coverage available for over-the-counter medications for each covered individual over a 12-month period. Prior to implementing policy and co-payment changes authorized under this section, the Executive Administrator and Board of Trustees shall submit the proposed policies and co-payments to the Committee on Employee Hospital and Medical Benefits for its review.

(b) Incentive Programs. — For the purposes of helping Plan members to achieve and maintain a healthy lifestyle without impairing patient care, and to increase cost effectiveness in Plan coverage, the Executive Administrator and Board of Trustees may adopt programs offering incentives to Plan members to encourage changes in member behavior or lifestyle designed to improve member health and promote cost-efficiency in the Plan. Participation in one or more incentive programs is voluntary on the part of the Plan member. Before adopting an incentive program, the Executive Administrator and Board of Trustees shall conduct an impact analysis on the proposed incentive program to determine (i) whether the program is likely to result in significant member satisfaction, (ii) that it will not adversely affect quality of care, and (iii) whether it is likely to result in significant cost savings to the Plan. The impact analysis may be conducted by a committee of the Plan, in conjunction with the Plan's consulting actuary, provided that the Plan's medical director participates in the analysis. An approved incentive plan may provide for a waiver of deductibles, co-payments, and coinsurance required under this Article in order to determine the effectiveness of the incentive program in promoting the health of members and increasing cost-effectiveness to the Plan. The Executive Administrator and Board of Trustees shall, before implementing incentive programs authorized under this section, submit the proposed programs to the Committee on Employee Hospital and Medical Benefits for review. (2008-168, s. 3(p).)

Editor's Note. — This section was codified as G.S. 135-39.23 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(p), effective July 1, 2008. It has been renumbered as G.S. 135-45.11 at the direction of the Revisor of Statutes.

Session Laws 2008-168, s. 7, made this section effective July 1, 2008.

§ 135-45.12. Cessation of coverage.

(a) Coverage under this Plan of an employee and his or her surviving spouse or eligible dependent children or of a retired employee and his or her surviving spouse or eligible dependent children shall cease on the earliest of the following dates:

(1) The last day of the month in which an employee or retired employee dies. Provided such surviving spouse or eligible dependent children were covered under the Plan at the time of death of the former employee or retired employee, or were covered on September 30, 1986, any such surviving spouse or eligible dependent children may then elect to continue coverage under the Plan by submitting written application to the Claims Processor and by paying the cost for such coverage when due at the applicable fees. Such coverage shall cease on

the last day of the month in which such surviving spouse or eligible dependent children die, except as provided by this Article.

(2) The last day of the month in which an employee's employment with the State is terminated as provided in subsection (c) of this section.

(3) The last day of the month in which a divorce becomes final.

(4) The last day of the month in which an employee or retired employee requests cancellation of coverage.

(5) The last day of the month in which a covered individual enters active military service.

(6) The last day of the month in which a covered individual is found to have knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan. The Executive Administrator and Board of Trustees may make an exception to the provisions of this subdivision when persons subject to this subdivision have had a cessation of coverage for a period of five years and have made a full and complete restitution to the Plan for all fraudulent claim amounts. Nothing in this subdivision shall be construed to obligate the Executive Administrator and Board of Trustees to make an exception as allowed for under this subdivision.

(7) The last day of the month in which an employee who is Medicare-eligible selects Medicare to be the primary payer of medical benefits. Coverage for a Medicare-eligible spouse of an employee shall also cease the last day of the month in which Medicare is selected to be the primary payer of medical benefits for the Medicare-eligible spouse. Such members are eligible to apply for conversion coverage.

(b) Coverage under this Plan as a dependent child ceases when the child ceases to be a dependent child as defined by G.S. 135-45.1 except, coverage may continue under this Plan for a period of not more than 36 months after loss of dependent status on a fully contributory basis provided the dependent child was covered under the Plan at the time of loss of dependent status.

(c) Coverage under the Plan as a surviving dependent child whether covered as a dependent of a surviving spouse, or as an individual member (no living parent), ceases when the child ceases to be a dependent child as defined by G.S. 135-45.1, except coverage may continue under the Plan on a fully contributory basis for a period of not more than 36 months after loss of dependent status.

(d) Termination of employment shall mean termination for any reason, including layoff and leave of absence, except as provided in subdivisions (a)(1) and (2) of this section, but shall not, for purposes of this Plan, include retirement upon which the employee is granted an immediate service or disability pension under and pursuant to a State-supported Retirement System.

(1) In the event of termination for any reason other than death, coverage under the Plan for an employee and his or her eligible spouse or dependent children, provided the eligible spouse or dependent children were covered under the Plan at termination of employment may be continued for a period of not more than 18 months following termination of employment on a fully contributory basis. Employees who were covered under the Plan at termination of employment may be continued for a period of not more than 18 months or 29 months if determined to be disabled under the Social Security Act, Title II, OASDI or Title XVI, SSI.

(2) In the event of approved leave of absence without pay, other than for active duty in the armed forces of the United States, coverage under this Plan for an employee and his or her dependents may be continued during the period of such leave of absence by the employee's paying one hundred percent (100%) of the cost.

(3) If employment is terminated in the second half of a calendar month and the covered individual has made the required contribution for any coverage in the following month, that coverage will be continued to the end of the calendar month following the month in which employment was terminated.

(4) Employees paid for less than 12 months in a year, who are terminated at the end of the work year and who have made contributions for the non-work months, will continue to be covered to the end of the period for which they have made contributions, with the understanding that if they are not employed by another State-covered employer under this Plan at the beginning of the next work year, the employee will refund to the ex-employer the amount of the employer's cost paid for them during the non-paycheck months.

(5) Any employee receiving benefits pursuant to Article 6 of this Chapter when the employee has less than five years of retirement membership service, or an employee on leave of absence without pay due to illness or injury for up to 12 months, is entitled to continued coverage under the Plan for the employee and any eligible dependents by the employee's paying one hundred percent (100%) of the cost.

(e) A legally divorced spouse and any eligible dependent children of a covered employee or retired employee may continue coverage under this Plan for a period of not more than 36 months following the first of the month after a divorce becomes final on a fully contributory basis, provided the former spouse and any eligible dependent children were covered under the Plan at the time a divorce became final.

(f) A legally separated spouse of a covered employee or retired employee may continue coverage under this Plan for a period not to exceed 36 months from the separation date on a fully contributory basis, provided the separated spouse was covered under the Plan at the time of separation and provided the covered employee's or retired employee's actions result in the loss of coverage for the separated spouse. Eligible dependent children may also continue coverage if covered under the Plan at time of separation, provided the employee's or retired employee's actions result in the loss of coverage for the dependent children.

(g) Whenever this section gives a right to continuation coverage, such coverage must be elected within the time allowed by applicable federal law.

(h) Continuation coverage under this Plan shall not be continued past the occurrence of any one of the following events:

(1) The termination of the Plan.

(2) Failure of a Plan member to pay monthly in advance any required premiums.

(3) A person becomes a covered employee or a dependent of a covered employee under any group health plan and that group health plan has no restrictions or limitations on benefits.

(4) A person becomes eligible for Medicare benefits on or after the effective date of the continuation coverage.

(5) The person was determined to be no longer disabled, provided the 18-month coverage was extended to 29 months due to having been determined to be disabled under the Social Security Act, Title II, OASDI or Title XVI, SSI.

(6) The person reaches the maximum applicable continuation period of 18, 29, or 36 months.

(i) Notice requirements concerning continuation coverage shall be developed by the Executive Administrator and Board of Trustees.

(j) The spouse and any eligible dependent children of a covered employee may continue coverage under the Plan on a fully contributory basis for a period not to exceed 36 months from the date the employee becomes eligible for Medicare benefits which results in a loss of coverage under the Plan, provided that the spouse and eligible dependent children were covered under the Plan at the time the employee became eligible for Medicare benefits which results in a loss of coverage under the Plan. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 17, 19-21; 1985, c. 732, ss. 13, 34; 1985 (Reg. Sess., 1986), c. 1020, ss. 19, 29(m)-(x); 1987, c. 738, s. 29(o); 1989, c. 752, s. 22(p); 1991, c. 427, s. 42; 1995, c. 278, s. 2; 1997-512, ss. 32-35; 2000-184, s. 4; 2008-168, ss. 1(a), 3(a), (q); 2008-187, s. 49.5.)

Editor's Note. — This section was formerly codified as G.S. 135-40.11. It was recodified as G.S. 135-39.24 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(q), effective July 1, 2008. It has been renumbered as G.S. 135-45.12 at the direction of the Revisor of Statutes.

Session Laws 2008-187, s. 49.5, was contingent on House Bill 2443, 2007 Regular Session becoming law, which it did. House Bill 2443 was enacted as Session Laws 2008-168.

Effect of Amendments. — Session Laws 2008-168, s. 3(q), effective July 1, 2008, substituted "G.S. 135-45.1" for "G.S. 135-40.1(3)" in subsection (b); redesignated subsections (b1) through (j) as present subsections (c) through (i); redesignated subdivisions (d)(3) through (d)(6) as subdivisions (d)(2) through (d)(5); substituted "G.S. 135-45.1" for "G.S. 135-40.1(3)" in present subsection (c); inserted "subdivisions" preceding "(a)(1) and (2)" in present subsection (d); deleted subsection (d) regarding payment of benefit and exception following cessation of coverage; and substituted "within the time allowed by applicable federal law" for "no later than a date set by the Executive Administrator and Board of Trustees" in present subsection (f).

Session Laws 2008-187, s. 49.5, effective August 7, 2008, redesignated the second subsection (d) as subsection (e) and relettered the remaining subsections accordingly.

§ 135-45.13. Conversion.

(a) Upon a cessation of group coverage under the Plan and/or eligibility for group coverage under the Plan, an employee or dependent shall be entitled to a conversion to nongroup coverage without the necessity of a physical examination. Such conversion coverage shall include hospitalization, surgical, and medical benefits as contained in the major medical and alternative plan conversion provisions of Article 53 of Chapter 58 of the General Statutes. The Executive Administrator and Board of Trustees in their sole discretion shall approve the conversion coverage, which shall be administered by the Claims Processor through an insurance contract arranged by the Claims Processor, or administered as otherwise directed by the Executive Administrator and Board of Trustees. An eligible employee or dependent must apply for conversion coverage within 30 days after termination of group eligibility.

(b) The Executive Administrator and Board of Trustees shall provide for the continuation of conversion privilege exercised under the predecessor plan, on a fully contributory basis. The Executive Administrator and Board of Trustees shall consult with the Committee on Employee Hospital and Medical Benefits before taking action under this subsection. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 21.6; 1985, c. 732, ss. 30, 56; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 2008-168, ss. 1(a), 3(a), (r).)

Editor's Note. — This section was formerly codified as G.S. 135-40.12. It was recodified as G.S. 135-39.25 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(r), effective July 1, 2008. It has been renumbered as G.S. 135-45.13 at the direction of the Revisor of Statutes.

§ 135-45.14. Coordination of benefits.

(a) Benefits Subject to This Provision. — All of the benefits provided under this Comprehensive Major Medical Plan.

(b) Definitions. —

(1) "Plan" means any Plan providing benefits or services for or by reason of medical or dental care or treatment, which benefits or services are provided by (i) group, blanket or franchise insured or uninsured coverage, (ii) hospital services prepayment Plan on a group basis, medical service prepayment Plan on a group basis, group practice, or other prepayment coverage on a group basis, (iii) any coverage under labor-management trusteed plans, union welfare plans, employer organization plans, or employee benefit organization plans, and (iv) any coverage under governmental programs except Medicare, or any coverage required or provided by any statute, which coverage is not otherwise excluded from the calculation of benefits under this Plan, but the term "Plan" shall not include any individual policies.

The term "Plan" shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other plans into consideration in determining its benefits and that portion which does not.

(2) "Covered services" means any necessary, reasonable and customary item of expense at least a portion of which is covered under at least one of the plans covering the person for whom claim is made. To the extent legally possible, it shall be synonymous with allowable expenses. When a Plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered shall be deemed to be both an allowable expense and a benefit paid.

(3) "Claim determination period" means any period of time during which a person covered by this Plan is eligible to receive benefits.

(c) Effect on Benefits. —

(1) This provision shall apply in determining the benefits as to a person covered under this Plan for any claim determination period if, for the covered services incurred as to such a person during such claim determination period, the sum of:

a. The benefits that would be payable under this Plan in the absence of this provision, and

b. The benefits that would be payable under all other plans in the absence therein of provisions of similar purpose of this provision would exceed the usual and customary charges for such covered services.

(2) As to any claim determination period with respect to which this provision is applicable, the benefits that would be payable under this Plan in the absence of this provision for the covered services incurred as to such person during such claim determination period shall be reduced to the extent necessary so that the sum of such reduced benefit and all the benefits payable for such covered services under all other plans, except as provided in Item (3) immediately below, shall not exceed the total of such covered services. Benefits payable under another Plan include the benefits that would have been payable had claim been duly made therefor. In the case of another Plan which does not contain a provision coordinating its benefits, the benefits of such other Plan shall be determined before the benefits of this Plan. A Plan without a coordination of benefits provision shall be deemed to be the primary carrier within the meaning of this Plan.

(3) If:

a. Another Plan which is involved in Item (2) immediately above and which contains provisions coordinating its benefits with those of this Plan would, according to its rules, determine its benefits after the benefits of this Plan have been determined, and

b. The rules set forth in Item (4) immediately below would require this Plan to determine its benefits before such other Plan, then the benefits of such other plan will be ignored for the purposes of determining the benefits under this Plan.

(4) For the purposes of Item (3) immediately above, the rules establishing the order of benefit determination are:

a. The benefits of a Plan which covers the person on whose covered services claim is based other than as a dependent shall be determined before the benefits of a Plan which covers such person as a dependent;

b. Except as stated in sub-subdivision c of this subdivision when this Plan and another Plan cover the same child as a dependent of different persons called parents:

1. the benefits of the Plan of the parent whose birthday falls earlier in the calendar year are determined before the benefits of the Plan of the parent whose birthday falls later in the calendar year; but
2. if both parents have the same birthday, the benefits of the Plan that has covered a parent for a longer period of time are determined before those of the Plan that has covered the other parent for a shorter period of time; however, if the other Plan has a rule based on the gender of the parent, and if as a result, the Plans do not agree on the order of benefits, the rule in the other Plan will determine the order of benefits.

c. If two or more Plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

1. first, the Plan of the parent with custody of the child;
2. second, the Plan of the spouse of the parent with custody of the child; and
3. third, the Plan of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the Plan of that parent has actual knowledge of those terms, the benefits of that Plan are determined first. This paragraph does not apply with respect to any claim determination period or Plan year during which any benefits are actually paid or provided before the entity has actual knowledge.

d. The benefits of a Plan that covers the person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a Plan that covers that person as a laid-off or retired employee (or as that employee's dependent). If the other Plan does not have this rule, and if, as a result, the Plans do not agree on the order of benefits, this rule is ignored.

e. When rules a and b immediately above do not establish an order of benefit determination, the benefits of a Plan which has covered the person on whose covered services claim is based for the longer period of time shall be determined before the benefits of a Plan which had covered such person for the shorter period of time.

(5) When this provision operates to reduce the total amount of benefits otherwise payable as to a person covered under this Plan during any claim determination period, each benefit that would be payable in the absence of this provision shall be reduced proportionately, and such

reduced amount shall be charged against any applicable benefit limit of this Plan.

(d) Medicare Participants' Eligibility. — In the case of employees eligible under the Plan who are also eligible for Medicare benefits, benefits under the Plan will be paid in coordination with Medicare benefits in a manner consistent with federal law.

(e) Right to Receive and Release Necessary Information. — For the purpose of determining the applicability of and implementing the terms of this provision of this Plan or any provision of similar purpose of any other Plan, the Claims Processor may, without the consent of or notice to any person, release to or obtain from any insurance company or other organization or person any information, with respect to any person, which the Claims Processor deems to be necessary for such purposes. Any person claiming benefits under this Plan shall furnish to the Claims Processor such information as may be necessary to implement the provision.

(f) Facility of Payment. — Whenever payments which should have been made under this Plan, in accordance with this provision, have been made under any other plans, the Claims Processor shall have the right, exercisable alone and in its sole discretion, to pay over to any organizations making such other payments any amounts it shall determine to be warranted in order to satisfy the intent of this provision, and amounts to be paid shall be deemed to be benefits paid under this Plan, and, to the extent of such payments, the Claims Processor shall be fully discharged from liability under the Plan.

(g) Right of Recovery. — Whenever payments have been made by the Claims Processor with respect to covered services in a total amount which is, at any time, in excess of the maximum amount of payment necessary at that time to satisfy the intent of this provision, irrespective of to whom paid, the Claims Processor shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as the Claims Processor shall determine: any persons to or for or with respect to whom such payments were made, any insurance companies, or any other organizations. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 18; 1985 (Reg. Sess., 1986), c. 1020, ss. 20, 30; 1989, c. 770, s. 35; 2008-168, ss. 1(a), 3(a), (s).)

Editor's Note. — This section was formerly codified as G.S. 135-40.13. It was recodified as G.S. 135-39.26 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(s), effective July 1, 2008. It has been renumbered as G.S. 135-45.14 at the direction of the Revisor of Statutes.

§ 135-45.15. Liability of third person; right of subrogation; right of first recovery.

(a) The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are related to an injury caused by a liable third party. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

(b) If the Plan is precluded from exercising its right of subrogation, it may exercise its rights of recovery pursuant to G.S. 135-40.13(g). If the Plan recovers damages from a liable third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection.

(c) In the event a Plan member recovers any amounts from a liable third party to which the Plan is entitled under this section, the Plan may recover the amounts directly from the Plan member. The Plan has a lien, for not more than the value of claims paid related to the liability of the third party, on any damages subsequently recovered against the liable third party. If the Plan member fails to pursue the remedy against a liable third party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own name or in the name of the Plan member for the amount paid by the Plan.

(d) In no event shall the Plan's lien exceed fifty percent (50%) of the total damages recovered by the Plan member, exclusive of the Plan member's reasonable costs of collection as determined by the Plan in the Plan's sole discretion. The decision by the Plan as to the reasonable cost of collection is conclusive and is not a "final agency decision" for purposes of a contested case under Chapter 150B of the General Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan member is represented by an attorney, and the attorney shall disburse proceeds pursuant to this section. (2004-124, s. 31.25; 2006-264, s. 66(a); 2008-168, ss. 1(a), 3(a), (t).)

Editor's Note. — This section was formerly codified as G.S. 135-40.13A. It was recodified as G.S. 135-39.27 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(t), effective July 1, 2008. It has been renumbered as G.S. 135-45.15 at the direction of the Revisor of Statutes.

§ 135-45.16. Right to amend.

The General Assembly reserves the right to alter, amend, or repeal Parts 2 and 3 of this Article. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 62; 2008-168, ss. 3(a), (u).)

Editor's Note. — This section was formerly codified as G.S. 135-40.14. It was recodified as G.S. 135-39.28 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(u), effective July 1, 2008. It has been renumbered as G.S. 135-45.16 at the direction of the Revisor of Statutes.

Part 4. Long-Term Care Benefits.

§ 135-46. Undertaking.

(a) The State of North Carolina undertakes to make available an optional program of long-term care benefits for the benefit of its qualified employees, retired employees and their dependents which will pay benefits in accordance with the terms hereof. Retired employees of the Local Governmental Employees' Retirement System pursuant to Article 3 of Chapter 128 of the General Statutes and their dependents are also eligible to be qualified for the benefits provided by this Part.

(b) The long-term care benefits provided by this Part shall be made available through the State Health Plan for Teachers and State Employees pursuant to Article 2 and 3A of this Chapter (hereinafter called the "Plan") and administered by the Plan's Executive Administrator and Board of Trustees. In administering the benefits provided by this Part, the Executive Administrator and Board of Trustees shall have the same type of powers and duties that are provided under Part 3 of this Article for hospital and medical benefits. The benefits provided by this Part may be offered by the Plan on a self-insured basis, in which case a third-party claims processor shall be chosen through competitive bids, or through a contract of insurance, in which case a carrier licensed to do business in North Carolina shall be selected on a competitive bid basis in accordance with State law.

(c) The benefits authorized by this Part are available only to qualified employees and retired employees who voluntarily elect to provide such benefits for themselves and their qualified dependents. Payroll deductions shall be available from employee salary and disability benefit payments and from retired employee retirement benefit payments for fully contributory premium amounts.

(d) The Executive Administrator and Board of Trustees of the Plan shall insure insofar as possible that the long-term care benefits provided by this Part shall be tax-qualified under federal law. (1997-468, s. 7; 2007-323, s. 28.22A(o); 2007-345, s. 12; 2008-168, ss. 1(a), 4(a)-(c).)

Editor's Note. — Session Laws 2008-168, s. 1(a), effective July 1, 2008, recodified former Article 3 of Chapter 135 as Article 3A of Chapter 135. Session Laws 2008-168, s. 4(a), recodified Part 4 of Article 3 of Chapter 135 as Part 4A of Article 3A of Chapter 135. Part 4A of Article 3A was subsequently renumbered as Part 4 of Article 3A at the direction of the Revisor of Statutes.

Session Laws 2008-168, s. 4(b), recodified former G.S. 135-41 under Part 4A of Article 3A of Chapter 135. G.S. 135-41 was subsequently renumbered as G.S. 135-46 at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 2008-168, s. 4(c), effective July 1, 2008, in subsection (b), deleted "in accordance with State law" following "competitive bids" in the last sentence.

§ 135-46.1. Long-term care benefits.

Long-term care benefits provided by this Part are subject to elimination periods, coinsurance provisions, and other limitations separate and apart from those provided for in Part 3 of this Article. No limitation on out-of-pocket expenses are provided for the benefits covered by this section. Long-term care benefits are as follows:

(1) Nursing Home Benefits. — The Plan will pay a fixed amount of the reasonable and customary daily charges allowed for nursing facilities providing skilled nursing care and intermediate nursing care up to a maximum amount per day for each day after a fixed number of consecutive days for each nursing home stay. Such daily charges shall be inclusive of semiprivate room and board; skilled and semiskilled nursing services; routine laboratory tests and examinations; physical, occupational, and speech therapy; respiratory and other gas therapy; and drugs, injections, biologicals, fluids, solutions, dietary aids and supplements, and other routine medical supplies and equipment. Readmission to a nursing home within 180 days, exclusive of hospital stays, for the same or related cause or causes shall be considered a single nursing home stay for the purposes of this section. Benefits payable under this subdivision are contingent upon compliance with the following conditions and will, in no instance, be paid under this section without compliance with each of the following conditions:

a. Confinement to a nursing home is medically appropriate due to an illness, disease, or injury upon recommendation of an admitting physician other than a proprietor, employee, or agent of the nursing home;

b. Confinement to a nursing home is for any overnight stay for which a charge for a day's stay is due and payable; and

c. Prior to confinement, the admitting physician secures approval certification from the Plan for confinement.

As used in this section, a nursing home is a facility or a part of a facility which is (i) operated under State law and which is qualified as a skilled nursing or intermediate nursing facility under Medicare; or is (ii) a facility meeting the requirements for licensure under Chapter 131E of the General Statutes.

(2) Custodial Benefits. — The Plan will pay a fixed percentage of the fixed amount of reasonable and customary daily charges allowed by the Plan in subdivision (1) of this section for assisted living facilities, for adult day care facilities, and for home care agencies up to a maximum amount per day for each day after a fixed number of consecutive days that such custodial care is provided. Benefits payable under this subdivision are contingent upon compliance with the following conditions and will, in no instance, be paid under this subdivision without compliance with each of the following conditions:

a. Use of such custodial benefits is medically appropriate in a treatment plan established and certified initially and at least once every six months by an attending physician or other allied health professionals other than a proprietor, employee, or agent of one or more of the aforementioned facilities and agencies;

b. Confinement to a nursing home would be medically appropriate without custodial care proposed to be rendered by one or more of the aforementioned facilities or agencies; and

c. Prior to use of such custodial benefits, an attending physician or other allied health professional secures approval from the Plan for the use of the benefits.

As used in this section, an assisted living facility is a facility which (i) is operated under State law to provide residential care for the aged or disabled whose principal need is a home which provides personal care appropriate to their age or disability; or (ii) meets the requirements for licensure under Chapter 131D of the General Statutes. As used in this section, an adult care facility is a facility which (i) is operated under State law to provide group care for the aged and disabled in a setting away from their residence on a less than 24-hour basis when such aged or disabled would otherwise be in need of full-time personal care away from their residence; or (ii) meets the requirements for certification under Chapter 131D of the General Statutes. As used in this section, a home care agency is a residential care agency which is (i) operated under State law and which is qualified as a home health care agency under Medicare; or (ii) an agency meeting the requirements for licensure as a home care agency under Chapter 131E of the General Statutes.

(3) Other Benefits. — Upon prior approval of the Plan, other care, services, supplies, and equipment may be used as more cost-effective alternatives to the benefits provided by this section when directed by an attending physician.

(4) The Executive Administrator and Board of Trustees of the Plan shall establish the payment percentages, maximum daily payment rates, benefit periods, elimination periods, and maximum lifetime benefits payable for each covered individual for the nursing home and custodial benefits provided by this section. The Executive Administrator and Board of Trustees shall provide for inflationary increases in the maximum daily payment rates and the maximum lifetime benefits payable for each covered individual.

(5) The Executive Administrator and Board of Trustees of the Plan shall provide a bed reservation benefit whenever Plan members are hospitalized during a stay in a nursing home or an assisted living facility.

(6) The Executive Administrator and Board of Trustees of the Plan shall provide for a waiver of premiums involving minimum lengths of stay in a nursing home or an assisted living facility. In addition, the

Executive Administrator and Board of Trustees shall allow coverage to be reinstated upon failure to pay premiums, provided certain grace periods are not exceeded and retroactive premium payments are made.

(7) Limitations and Exclusions to Long-Term Care Benefits. — The benefits provided by this section are for the purpose of meeting the requirements for assistance from the loss of functional capacity associated with a chronic illness, disease, or disabling injury for extended periods of time; and are, in no way, intended to duplicate the benefits provided for acute and other medical care provided by Medicare or Part 3 of this Article. A loss of functional capacity can occur from: (i) an illness, disease, or disabling injury resulting in a physical incapacity to perform the activities of daily living; or (ii) an irreversible organic mental impairment resulting in a mental incapacity. Activities of daily living consist of routine functions involving personal care and mobility. (1997-468, s. 7; 2008-168, ss. 1(a), 4(a), (d), (e).)

Editor's Note. — Session Laws 2008-168, s. 4(a), recodified Parts 4 and 5 of Article 3 of Chapter 135 as Parts 4A and 5A of Article 3A of Chapter 135. Parts 4A and 5A were subsequently renumbered as Parts 4 and 5 at the direction of the Revisor of Statutes. Session Laws 2008-168, s. 4(d), recodified former G.S. 135-41.1 in Part 4A of Article 3A of Chapter 135. G.S. 135-41.1 was subsequently renumbered as G.S. 135-46.1 at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-168, s. 4(e), effective July 1, 2008, substituted "Part 3A" [now Part 3] for "Part 3" in the first sentence of the introductory paragraph.

§ 135-46.2. Conversion.

Upon cessation of group coverage under this Part, an employee, retired employee, or dependent shall be entitled to a conversion to a nongroup plan of long-term care benefits. The Executive Administrator and Board of Trustees of the Plan shall determine how the conversion rights authorized by this Part shall be administered. (1997-468, s. 7; 2008-168, ss. 1(a), 4(a).)

Editor's Note. — Session Laws 2008-168, s. 4(a), recodified Parts 4 and 5 of Article 3 of Chapter 135 as Parts 4A and 5A of Article 3A of Chapter 135. Parts 4A and 5A were subsequently renumbered as Parts 4 and 5 at the direction of the Revisor of Statutes. G.S. 135-41.2 was subsequently renumbered as G.S. 135-46.2 at the direction of the Revisor of Statutes.

§ 135-46.3. Right to alter, amend, or repeal.

The General Assembly reserves the right to alter, amend, or repeal this Part. (1997-468, s. 7; 2008-168, ss. 1(a), 4(a).)

Editor's Note. — Session Laws 2008-168, s. 4(a), recodified Parts 4 and 5 of Article 3 of Chapter 135 as Parts 4A and 5A of Article 3A of Chapter 135. Parts 4A and 5A were subsequently renumbered as Parts 4 and 5 at the direction of the Revisor of Statutes. G.S. 135-41.3 was subsequently renumbered as G.S. 135-46.3 at the direction of the Revisor of Statutes.

Part 5. Health Insurance Program for Children.

§ 135-47. (Repealed effective July 1, 2010) Administration and processing of Program claims.

(a) The State of North Carolina undertakes to make available a health insurance program for children (Program), which shall be called North

Carolina Health Choice for Children. The Program shall provide comprehensive acute medical care to low-income, uninsured children who are residents of this State and who meet the eligibility requirements established for the Program under Part 8 of Article 2 of Chapter 108A of the General Statutes. Except as provided in this Part, the Program shall be administered by the Department of Health and Human Services in accordance with Part 8 of Article 2 of Chapter 108A of the General Statutes and as required under applicable federal law.

(a1) Notwithstanding any other provision of law, the Secretary of the Department of Health and Human Services shall delegate the responsibility for the administration and processing of claims for benefits provided under the Program to the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees (hereinafter called the "Plan") until such date, but not later than July 1, 2010, the Secretary determines that the Department is prepared to assume some or all of these responsibilities. In administering the processing of claims for benefits, the Executive Administrator and Board of Trustees shall have the same type of powers and duties as provided for these purposes under the Predecessor Plan. For the purposes of this Part, "Predecessor Plan" means the "North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in effect prior to July 1, 2008." The claims payments shall be made against accounts maintained by the Department of Health and Human Services. The Executive Administrator and Board of Trustees shall establish premium rates for benefits provided under this Part. The Department of Health and Human Services shall, from State and federal appropriations and from any other funds made available for the Program, make payments to the Plan as determined by the Plan for its administration, claims processing, and other services delegated by the Secretary to provide coverage for acute medical care for children eligible for benefits provided under the Program. The Plan shall not incur any financial obligations for the Program in excess of the amount of funds that the Plan receives for the Program.

(b) The benefits provided under the Program shall be equivalent to the Teachers' and State Employees' Comprehensive Major Medical Plan (hereafter "Predecessor Plan") in effect through June 30, 2008, and as provided under Part 8 of Article 2 of Chapter 108A of the General Statutes. To the extent there is a conflict between the provisions of Part 8 of Article 2 of Chapter 108A and the Predecessor Plan pertaining to eligibility, fees, deductibles, copayments, and lifetime maximum benefits, and other cost-sharing charges, the provisions of Part 8 of Article 2 of Chapter 108A shall control. In administering the benefits provided by this Part, the Executive Administrator and Board of Trustees shall have the same type of powers and duties that are provided under the Predecessor Plan for hospital and medical benefits.

(c) The benefits authorized by this Part are available only to children who are residents of this State and who meet the eligibility requirements established for the Program under Part 8 of Article 2 of Chapter 108A of the General Statutes. (1998-1, s. 4(a); 2007-323, s. 28.22A(i); 2008-107, s. 10.13(b), (n); 2008-168, ss. 1(a), 4(a).)

Repealed effective July 1, 2010. — This section is repealed effective July 1, 2010, by Session Laws 2008-107, s. 10.13(n).

Cross References. — As to The Health Insurance Program for Children Act of 1998, see G.S. 108A-70.18 et seq.

Editor's Note. — Session Laws 2008-168, s. 1(a), effective July 1, 2008, recodified former Article 3 of Chapter 135 as Article 3A of Chapter 135. Session Laws 2008-168, s. 4(a), recodified Part 5 of Article 3 of Chapter 135 as Part 5A of Article 3A of Chapter 135. Part 5A of Article 3A was subsequently renumbered as Part 5 of Article 3A at the direction of the Revisor of Statutes. G.S. 135-42 was subsequently renumbered as G.S. 135-47 at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 10.13(b), effective July 1, 2008, rewrote the section.

§ 135-47.1. Right to alter, amend, or repeal.

The General Assembly reserves the right to alter, amend, or repeal this Part. (1998-1, s. 4(a); 2008-168, ss. 1(a), 4(a).)

Editor's Note. — Session Laws 2008-168, s. 4(a), recodified Parts 4 and 5 of Article 3 of Chapter 135 as Parts 4A and 5A of Article 3A of Chapter 135. Parts 4A and 5A were subsequently renumbered as Parts 4 and 5 at the direction of the Revisor of Statutes. G.S. 135-42.1 was subsequently renumbered as G.S. 135-47.1 at the direction of the Revisor of Statutes.

§ 135-47.2. Child health insurance fund.

There is established a Child Health Insurance Fund. All premium receipts or any other receipts, including earnings on investments, occurring or arising in connection with acute medical care benefits provided under the Program shall be deposited into the Child Health Insurance Fund. Disbursements from the Child Health Insurance Fund shall include any and all amounts required to pay the benefits and administrative costs of the Health Insurance Program for Children. (2008-107, s. 10.13(c).)

Editor's Note. — This section was codified as G.S. 135-43, by Session Laws 2008-107, s. 10.13(c). It was renumbered as G.S. 135-47.2 at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 10.13(n), as amended by Session Laws 2008-118, s. 1.6(c), made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 135-47.3. Data reporting.

The Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees shall provide to the Department:

(1) Data as necessary and in sufficient detail to meet federal reporting requirements under Title XXI; and

(2) Data showing cost-sharing paid by Program enrollees to assist the Department in monitoring and ensuring that enrollees do not exceed the Program's cost of sharing limitations.

(3) Data as necessary and in sufficient detail to meet the data collections and reporting requirements pursuant to G.S. 108A-70.27. (2008-107, s. 10.13(c).)

Editor's Note. — This section was codified as G.S. 135-44, by Session Laws 2008-107, s. 10.13(c). It was renumbered as G.S. 135-47.3 at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 10.13(n), as amended by Session Laws 2008-118, s. 1.6(c), made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

§§ 135-48, 135-49: Reserved for future codification purposes.

TABLES OF COMPARABLE SECTIONS FOR CHAPTER 135, ARTICLE 3A

Former to Present

Editor's Note. — The following table shows G.S. sections from former Chapter 135, Article 3, and their comparable, Chapter 135, revised Article 3A numbers.

Former Section	Present Section
135-37	135-43
135-38	135-43.1
135-38.1	135-43.4
135-39	135-44
135-39.1	135-43.5
135-39.2	135-44.1
135-39.3	135-43.3
135-39.4A	135-44.2
135-39.5	135-44.4
135-39.5A	135-44.4(27)
135-39.6	135-44.5
135-39.6A	135-44.6
135-39.7	135-44.7
135-39.8	135-44.8
135-39.9	135-43.6
135-39.10	135-44.3
135-39.11	135-43.7
135-40	Repealed
135-40.1	Repealed
135-40.2	135-45.2
135-40.3	135-45.4
135-40.3A	135-45.5
135-40.5	135-45.6
135-40.6A	Repealed
135-40.7	135-45.8
135-40.7B	135-45.9
135-40.10	135-45.10
135-40.11	135-45.11
135-40.12	135-45.13
135-40.13	135-45.14
135-40.13A	135-45.15
135-40.14	135-45.16
135-41	135-46
135-41.1	135-46.1
135-41.2	135-46.2
135-41.3	135-46.3
135-42	135-47
135-42.1	135-47.1

Article 4.

Consolidated Judicial Retirement Act.

§ 135-50. Short title and purpose.

(a) This Article shall be known and may be cited as the "Consolidated Judicial Retirement Act."

(b) The purpose of this Article is to improve the administration of justice by attracting and retaining the most highly qualified talent available within the State to the positions of justice and judge, district attorney and solicitor, public defender, the Director of Indigent Defense Services, and clerk of superior court, within the General Court of Justice. (1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, ss. 2, 3; 2005-276, s. 29.30A(a); 2005-345, s. 42; 2007-323, s. 28.21B(a); 2008-107, s. 26.24(a).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 26.24(a), effective July 1, 2008, inserted "the Director of Indigent Defense Services" in subsection (b).

§ 135-51. Scope.

(a) This Article provides consolidated retirement benefits for all justices and judges, district attorneys, and solicitors who are serving on January 1, 1974, and who become such thereafter; and for all clerks of superior court who are so serving on January 1, 1975, and who become such after that date; and for all public defenders who are serving on July 1, 2007, and who become public defenders after that date; and for the Director of Indigent Defense Services who is serving on July 1, 2008, and those who become Director of Indigent Defense Services after that date.

(b) For justices and judges of the appellate and superior court divisions of the General Court of Justice who so served prior to January 1, 1974, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Articles 6 and 8, as the case may be, of Chapter 7A of the General Statutes.

For district attorneys and judges of the district court of the General Court of Justice who so served prior to January 1, 1974, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Article 1 of this Chapter.

For clerks of superior court of the General Court of Justice who so served prior to January 1, 1975, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Article 1 of this Chapter.

(c) The retirement benefits of any person who becomes a justice or judge, district attorney, or solicitor on and after January 1, 1974, or clerk of superior court on and after January 1, 1975, or public defender on or after July 1, 2007, or the Director of Indigent Defense Services on or after July 1, 2008, shall be determined solely in accordance with the provisions of this Article. (1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, s. 4; 2005-276, s. 29.30A(b); 2005-345, s. 42; 2007-323, s. 28.21B(b); 2008-107, s. 26.24(b).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 26.24(b), effective July 1, 2008, added "and for the Director of Indigent Defense Services who is serving on July 1, 2008, and those who become Director of Indigent Defense Services after that date" at the end of subsection (a); and inserted "or the Director of Indigent Defense Services on or after July 1, 2008" in subsection (c).

§ 135-53. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Accumulated contributions" with respect to any member shall mean the sum of all the amounts deducted from the compensation of the member pursuant to G.S. 135-68 since he last became a member and credited to his account in the annuity savings fund, plus any amount standing to his credit pursuant to G.S. 135-67(c) as a result of a prior period of membership, plus any amounts credited to his account pursuant to G.S. 135-28.1(b) or 135-56(b), together with regular interest on all such amounts computed as provided in G.S. 135-7(b).

(2) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the bases of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(2a) "Average final compensation" shall mean the average annual compensation of a member during the 48 consecutive calendar months of membership service producing the highest such average.

(3) "Beneficiary" shall mean any person in receipt of a retirement allowance or other benefit as provided in this Article.

(4) "Board of Trustees" shall mean the Board of Trustees established by G.S. 135-6.

(4a) "Clerk of superior court" shall mean the clerk of superior court provided for in G.S. 7A-100(a).

(5) "Compensation" shall mean all salaries and wages derived from public funds which are earned by a member of the Retirement System for his service as a justice or judge, or district attorney, or clerk of superior court, or public defender, or the Director of Indigent Defense Services.

(6) "Creditable service" shall mean for any member the total of his prior service plus his membership service.

(6a) "Director of Indigent Defense Services" shall mean the Director of Indigent Defense Services as provided for in G.S. 7A-498.6.

(6b) "District attorney" shall mean the district attorney or solicitor provided for in G.S. 7A-60.

(7) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.

(8) "Final compensation" shall mean for any member the annual equivalent of the rate of compensation most recently applicable to him.

(9) "Judge" shall mean any justice or judge of the General Court of Justice and the administrative officer of the courts.

(10) "Medical board" shall mean the board of physicians provided for in G.S. 135-6.

(11) "Member" shall mean any person included in the membership of the Retirement System as provided in this Article.

(12) "Membership service" shall mean service as a judge, district attorney, clerk of superior court, public defender, or the Director of Indigent Defense Services rendered while a member of the Retirement System.

(13) "Previous system" shall mean, with respect to any member, the retirement benefit provisions of Article 6 and Article 8 of Chapter 7A of the General Statutes, to the extent that such Article or Articles were formerly applicable to the member, and in the case of judges of the district court division, district attorney, public defender, the Director of Indigent Defense Services, and and clerk of superior court of the General Court of Justice, the Teachers' and State Employees' Retirement System.

(14) "Prior service" shall mean service rendered by a member, prior to his membership in the Retirement System, for which credit is allowable under G.S. 135-56.

(14a) "Public defender" means a public defender provided for in G.S. 7A-498.7, the appellate defender provided for in G.S. 7A-498.8, the capital defender, and the juvenile defender.

(15) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the Board of Trustees in accordance with G.S. 135-7(b).

(16) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of this Chapter. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.

(17) "Retirement allowance" shall mean the periodic payments to which a beneficiary becomes entitled under the provisions of this Article.

(18) "Retirement System" shall mean the "Consolidated Judicial Retirement System" of North Carolina, as established in this Article.

(19) "Year" as used in this Article shall mean the regular fiscal year beginning July 1 and ending June 30 in the following calendar year, unless otherwise defined by regulation of the Board of Trustees. (1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, ss. 5-10; 1999-237, s. 28.24(f); 2005-276, s. 29.30A(c); 2005-345, s. 42; 2007-323, s. 28.21B(c); 2008-107, s. 26.24(c).)

Editor's Note. —

This section was amended by Session Laws 2007-323, s. 28.21B(c), in the coded bill drafting format provided by G.S. 120-20.1. In subdivision (13), the word "and" before "clerk of superior court" was omitted, not stricken through, and an additional word "and" was inserted, underlined, resulting in the word "and" appearing twice. In Session Laws 2008-107, s. 26.24(c), subdivision (13) was again amended in the coded bill drafting format and the extra "and" was omitted, but not stricken through. Subdivision (13) has been set out in the form above at the direction of the Revisor of Statutes.

Subdivision (6b), as enacted by Session Laws 2008-107, s. 26.24(c), was redesignated as subdivision (6a), and former subdivision (6a) was redesignated as present subdivision (6b), at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 26.24(c), effective July 1, 2008, inserted "or the Director of Indigent Defense Services" in subdivisions (5) and (12); added subdivision (6b); inserted "the Director of Indigent Defense Services" in subdivision (13); and made minor grammatical changes.

§ 135-54. Name and date of establishment.

A Retirement System is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances and other benefits under the provisions of this Article for justices and judges, district attorneys, public defenders, the Director of Indigent Defense Services, and clerks of superior court of the General Court of Justice of North Carolina, and their survivors. The Retirement System so created shall be established as of January 1, 1974.

The Retirement System shall have the power and privileges of a corporation and shall be known as the "Consolidated Judicial Retirement System of North Carolina," and by such name all of its business shall be transacted. (1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, s. 11; 2005-276, s. 29.30A(d); 2005-345, s. 42; 2007-323, s. 28.21B(d); 2008-107, s. 26.24(d).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 26.24(d), effective July 1, 2008, inserted "the Director of Indigent Defense Services" near the middle of the first paragraph.

§ 135-55. Membership.

(a) The membership of the Retirement System shall consist of:

(1) All judges and district attorneys in office on January 1, 1974;

(2) All persons who become judges and district attorneys or reenter service as judges and district attorneys after January 1, 1974;

(3) All clerks of superior court in office on January 1, 1975;

(4) All persons who become clerks of superior court or reenter service as clerks of superior court after January 1, 1975;

(5) All public defenders in office on July 1, 2007;

(6) All persons who become public defenders or reenter service as public defenders after July 1, 2007;

(7) The Director of Indigent Defense Services on July 1, 2008; and

(8) All persons who become the Director of Indigent Defense Services or reenter service as the Director of Indigent Defense Services after July 1, 2008.

(b) The membership of any person in the Retirement System shall cease upon:

(1) The withdrawal of his accumulated contributions after he is no longer a judge, district attorney, public defender, the Director of Indigent Defense Services, or clerk of superior court, or

(2) His retirement under the provisions of the Retirement System, or

(3) His death. (1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, ss. 12, 13; 2005-276, s. 29.30A(e); 2005-345, s. 42; 2007-323, s. 28.21B(e); 2008-107, s. 26.24(e).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 26.24(e), effective July 1, 2008, added subdivisions (a)(7) and (a)(8) and made related changes; and inserted "the Director of Indigent Defense Services" in subdivision (b)(1).

§ 135-56. Creditable service.

(a) Subject to such rules and regulations as the Board of Trustees shall adopt with regard to the verification of a judge's prior service, the prior service of a judge shall consist of his service rendered prior to January 1, 1974, as a justice of the Supreme Court, judge of the Court of Appeals, judge of the superior court, judge of the district court division of the General Court of

Justice, as administrative officer of the courts, or as a solicitor or district attorney.

(b) When membership ceases as a result of a member's withdrawal of his accumulated contributions, the prior service and previous membership service of the member shall no longer be considered to be creditable service; provided, however, that if a member whose creditable service has been cancelled in accordance with this subsection subsequently returns to membership for a period of five years, he may thereafter repay in a lump sum the amount withdrawn plus regular interest thereon from the date of withdrawal through the date of repayment and thereby increase his creditable service by the amount of creditable service lost when he withdrew his accumulated contributions.

(c) On and after January 1, 1984, the creditable service of a member who was a member of the former Uniform Solicitorial or Uniform Clerks of Superior Court Retirement Systems at the time of merger of those Systems into this Consolidated Judicial Retirement System and whose accumulated contributions are transferred from those Systems to this System, includes service that was creditable in the Uniform Solicitorial and Uniform Clerks of Superior Court Retirement Systems; and membership service with those Retirement Systems is membership service with this Retirement System.

(d) Any member may purchase creditable service for service as a judge, district attorney, or clerk of superior court, when not otherwise provided for in this section, and as a judge of any lawfully constituted court of this State inferior to the superior court, not to include service as a magistrate, justice of the peace or mayor's court judge. The member, after the transfer of any accumulated contributions from the Teachers' and State Employees' Retirement System or Local Governmental Employees' Retirement System, shall pay an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire with an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(e) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(f) The creditable service of a member who was a member of the Local Governmental Employees' Retirement System, the Teachers' and State Employees' Retirement System, or the Legislative Retirement System and whose accumulated contributions and reserves are transferred from that System to this System, includes service that was creditable in the Local Governmental Employees' Retirement System, the Teachers' and State Employees' Retirement System, or the Legislative Retirement System, and membership service with those Retirement Systems is membership service with this Retirement System.

(g) If a member who has not vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 135-75.1 for acts committed after July 1, 2007, then that member shall forfeit all benefits under this System. If a member who has vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 135-75.1 for acts committed after July 1, 2007, then that member is not entitled to any creditable service that accrued after July 1, 2007. No member shall forfeit any benefit or creditable service earned from a position not as a justice, judge, district attorney, or clerk of superior court.

(h) On and after July 1, 2007, the creditable service of a member who was a public defender and a member of the Teachers' and State Employees' Retirement System at the time of transfer of membership from the previous system to this System shall include service as a public defender that was creditable in the previous system immediately prior to July 1, 2007. The accumulated contributions, creditable service, and reserves, if any, of a member as a public defender shall be transferred from the previous system to this System in the same manner as prescribed under G.S. 135-28.1 as it pertained to judges of the district court division of the General Court of Justice.

(i) On and after July 1, 2008, the creditable service of a member who is the Director of Indigent Defense Services and a member of the Teachers' and State Employees' Retirement System at the time of transfer of membership from the previous system to this System shall include service as the Director of Indigent Defense Services beginning July 1, 2004, that was creditable in the previous system immediately prior to July 1, 2008. The accumulated contributions, creditable service, and reserves, if any, of a member as the Director of Indigent Defense Services beginning July 1, 2004, shall be transferred from the previous system to this System in the same manner as prescribed under G.S. 135-28.1 as it pertained to judges of the district court division of the General Court of Justice. (1973, c. 640, s. 1; 1977, c. 936; 1983 (Reg. Sess., 1984), c. 1031, ss. 14, 15; 1985, c. 649, s. 1; 1989, c. 255, s. 21(a); 1999-237, s. 28.24(c); 2003-284, s. 30.18(f); 2007-179, s. 4(b); 2007-323, s. 28.21B(h); 2008-107, s. 26.24(h).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 26.24(h), effective July 1, 2008, added subsection (i).

§ 135-58. Service retirement benefits.

(a) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 before July 1, 1990, after he either has attained his sixty-fifth birthday or has completed 24 years or more of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each month thereafter during his lifetime, the amount of which shall be computed as the sum of (1), (2) and (3) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which he is entitled under the Teachers' and State Employees' Retirement System, the Legislative

Retirement System or the North Carolina Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three fourths of his final compensation:

(1) Four percent (4%) of his final compensation, multiplied by the number of years of his creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

(2) Three and one-half percent (3 ½%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the superior court or as administrative officer of the courts;

(3) Three percent (3%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the district court, district attorney, or clerk of superior court.

(a1) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 on or after July 1, 1990, but before July 1, 1999, after he either has attained his 65th birthday or has completed 24 years or more of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each month thereafter during his lifetime, the amount of which shall be computed as the sum of (1), (2), and (3) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which he is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System or the North Carolina Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three-fourths of his final compensation:

(1) Four and two-hundredths percent (4.02%) of his final compensation, multiplied by the number of years of his creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

(2) Three and fifty-two hundredths percent (3.52%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the superior court or as administrative officer of the courts;

(3) Three and two-hundredths percent (3.02%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the district court, district attorney, or clerk of superior court.

(a2) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after July 1, 1999, but before July 1, 2001, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three-fourths of the member's final compensation:

(1) Four and two-hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

(2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court or as Administrative Officer of the Courts;

(3) Three and two-hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service, rendered as a judge of the district court, district attorney, or clerk of superior court;

(4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and

(5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this Chapter using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System to this System as provided in G.S. 135-56.

(a3) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after July 1, 2001, but before January 1, 2004, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three-fourths of the member's final compensation:

(1) Four and two-hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

(2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court or as Administrative Officer of the Courts;

(3) Three and two-hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service, rendered as a judge of the district court, district attorney, or clerk of superior court;

(4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and

(5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this Chapter using an

average final compensation as defined in G.S. 135-53(2a) and creditable service, including any sick leave standing to the credit of the member, equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System to this System as provided in G.S. 135-56.

(a4) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after January 1, 2004, but before July 1, 2007, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) of this subsection, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment), would total three-fourths of the member's final compensation:

(1) Four and two hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

(2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court or as Administrative Officer of the Courts;

(3) Three and two hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the district court, district attorney, or clerk of superior court;

(4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and

(5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this Chapter of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service, including any sick leave standing to the credit of the member, equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System or the Legislative Retirement System to this System as provided in G.S. 135-56.

(a5) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after July 1, 2007, but before July 1, 2008, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) of this subsection, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment), would total three-fourths of the member's final compensation:

(1) Four and two hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

(2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court or as Administrative Officer of the Courts;

(3) Three and two hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the district court, district attorney, clerk of superior court, or public defender;

(4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and

(5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this Chapter using an average final compensation as defined in G.S. 135-53(2a) and creditable service, including any sick leave standing to the credit of the member, equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System or the Legislative Retirement System to this System as provided in G.S. 135-56.

(a6) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after July 1, 2008, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) of this subsection, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment), would total three-fourths of the member's final compensation:

(1) Four and two hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

(2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court or as Administrative Officer of the Courts;

(3) Three and two hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the district court, district attorney, clerk of superior court, public defender, or the Director of Indigent Defense Services;

(4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and

(5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this Chapter using an average final compensation as defined in G.S. 135-53(2a) and creditable service, including any sick leave standing to the credit of the member, equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System or the Legislative Retirement System to this System as provided in G.S. 135-56.

(b) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 before he either has attained his sixty-fifth birthday or has completed 24 years of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each month thereafter during his lifetime, the amount of which shall be determined in the same manner and be subject to the same maximum limitation as provided for in subsection (a) above except that the allowance so computed shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which the member's retirement date precedes the first day of the month coincident with or next following the earlier of

(1) The member's sixty-fifth birthday or

(2) The date the member would have completed 24 years of creditable service if he had been in membership service from his retirement date until such date.

For the sole purpose of determining whether a member has completed the required 24 years of creditable service referred to in this subsection (b) or the date on which he would have completed such period of creditable service if he had remained in membership service, in the case of a member of the Teachers' and State Employees' Retirement System who became a member of this Retirement System under circumstances described in G.S. 135-28.1, and who at the time of his retirement hereunder is in service and has retained his membership in the Teachers' and State Employees' Retirement System as provided for in G.S. 135-28.1, his creditable service shall be taken as the sum of his creditable service hereunder plus the amount of creditable service remaining to his credit in such other system as provided for in G.S. 135-28.1.

(c) The foregoing subsections of this section to the contrary notwithstanding, in no event will the retirement allowance payable at any time to a retired member who was a member of a previous system immediately prior to January 1, 1974, prior to any reduction of such allowance in accordance with G.S. 135-61, be less than the retirement allowance to which he would have been entitled under the terms of such previous system if this Article had not been enacted.

(d) Commencing with the payment for the month of January 1974, the retirement allowance of each retired member of a previous system who was in receipt of a retirement allowance thereunder as of January 1, 1974, shall be paid from the assets of the Retirement System in the same amount as would have been applicable for January 1974, if this Article had not been enacted.

(e) Notwithstanding any other provision to the contrary, in no event will the retirement allowance payable at any time to a retired member who was a member of a previous system immediately prior to January 1, 1974, prior to any reduction of such allowance in accordance with G.S. 135-61, be greater than the retirement allowance to which he would have been entitled under the terms of such previous system if this Article had not been enacted or than the retirement allowance to which he would have been entitled under this Article if he had not been entitled to benefits under the terms of such previous system, whichever is larger. (1973, c. 640, s. 1; 1977, c. 1120, s. 2; 1983 (Reg. Sess., 1984), c. 1031, ss. 17, 18; c. 1109, ss. 13.14, 13.15; 1985, c. 649, s. 7; 1989 (Reg. Sess., 1990), c. 1077, ss. 6, 7; 1999-237, s. 28.24(d), (e); 2001-424, s. 32.29(a), (b); 2003-284, s. 30.18(g), (h); 2005-276, s. 29.30A(f), (g); 2005-345, s. 42; 2007-323, s. 28.21B(f), (g); 2008-107, s. 26.24(f), (g).)

Editor's Note. —

Session Laws 2008-107, s. 26.24(j), provides: "Notwithstanding any other law, the retirement allowance of any member covered by this section shall be calculated using an Average Final Compensation determined as of June 30, 2008, even though service beginning July 1, 2004, was transferred from the Teachers' and State Employees' Retirement System to the Consolidated Judicial Retirement System." Session Laws 2008-107, s. 26.24(g), added subsection (a6).

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, ss. 26.24(f) and (g), effective July 1, 2008, in subsection (a5), inserted "but before July 1, 2008" in the first sentence; and added subsection (a6).

§ 135-65. Post-retirement increases in allowances.

(a) Commencing with the post-retirement adjustment, effective July 1, 1974, all retirement allowances payable under the provisions of this Article shall be adjusted annually in accordance with the provisions of G.S. 135-5(o).

(b) Increases in Benefits Paid to Members Retired prior to July 1, 1978. — Notwithstanding subsection (a) of this section, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in subsection (a) of this section, shall be the current maximum four percent (4%) plus an additional one percent (1%) to a total of five percent (5%) for the year 1979 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(c) Increases in Benefits Paid to Members Retired prior to July 1, 1979. — Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, shall be the current maximum four percent (4%) plus an additional six percent (6%) to a total of ten percent (10%) for the year 1980-81 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(d) Increases in Benefits Paid to Members Retired Prior to July 1, 1982. — From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by four percent (4%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (a) of this section.

(e) Increase in Benefits Paid to Members Retired on or before July 1, 1983. — From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by eight percent (8%) of the allowance payable on July 1, 1983.

(f) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984. Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(g) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985. Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985 and June 30, 1986.

(h) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986. Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(i) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987. Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(j) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988. Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(k) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. — From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(*l*) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989. Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(m) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(n) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(o) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(p) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(q) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(r) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997. Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(s) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(t) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(u) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by two and six-tenths percent (2.6%) of the allowance payable on June 1, 2000. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of two and six-tenths percent (2.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000.

(v) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2000, and June 30, 2001.

(w) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2001, and June 30, 2002.

(x) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2002, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2002, and June 30, 2003.

(y) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2003, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2003, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2003, and June 30, 2004.

(z) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005.

(aa) From and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2005, shall be increased by three percent (3%) of the allowance payable on June 1, 2006. Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2005, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2005, and June 30, 2006.

(bb) From and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2006, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2007. Furthermore, from and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2006, but before June 30, 2007, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2006, and June 30, 2007.

(cc) From and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2007, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2008. Furthermore, from and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2007, but before June 30, 2008, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2007, and June 30, 2008. (1973, c. 640, s.

1; 1979, c. 838, s. 104; 1979, 2nd Sess., c. 1137, s. 69; 1983, c. 761, s. 221; 1983 (Reg. Sess., 1984), c. 1034, s. 224; 1985, c. 479, s. 189(b); 1985 (Reg. Sess., 1986), c. 1014, s. 49(b); 1987, c. 738, s. 27(b); 1987 (Reg. Sess., 1988), c. 1086, s. 22(b); 1989, c. 752, s. 41(b); 1989 (Reg. Sess., 1990), c. 1077, ss. 8, 9; 1991 (Reg. Sess., 1992), c. 900, s. 53(c); 1993, c. 321, s. 74(f); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(n); 1995, c. 507, s. 7.22(b); 1996, 2nd Ex. Sess., c. 18, s. 28.21(b); 1997-443, s. 33.22(e); 1998-153, s. 21(b); 1999-237, s. 28.23(b); 2000-67, s. 26.20(e); 2001-424, s. 32.22(b); 2002-126, s. 28.8(c); 2003-284, s. 30.17(b); 2004-124, s. 31.17(b); 2005-276, s. 29.25(b); 2006-66, s. 22.18(c); 2007-323, s. 28.20(b); 2008-107, s. 26.23(b).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 26.23(b), effective July 1, 2008, added subsection (cc).

§ 135-70.1. Transfer of members from the Local Governmental Employees' Retirement System, the Teachers' and State Employees' Retirement System, or the Legislative Retirement System.

Editor's Note. —

Session Laws 2008-107, s. 26.24(i), provides: "Notwithstanding the provisions of G.S. 135-28.1, G.S. 135-70.1, or any other law, any member covered by this section shall not be eligible to transfer any remaining creditable service from the Teachers' and State Employees' Retirement System to the Consolidated Judicial Retirement System until the member has contributed to the Consolidated Judicial System for a period of five years beginning July 1, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 5.

Supplemental Retirement Income Act of 1984.

§ 135-91. Administration.

(a) **(Effective until July 1, 2009)** The provisions of this Article shall be administered by the Department of State Treasurer and a Board of Trustees consisting of the Board of Trustees of the Teachers' and State Employees' Retirement System and the Board of Trustees of the Local Governmental Employees' Retirement System. The Department of State Treasurer and the Board of Trustees shall create a Supplemental Retirement Income Plan as of January 1, 1985, to be administered under the provisions of this Article.

(a) **(Effective July 1, 2009)** The provisions of this Article shall be administered by the Department of State Treasurer and the Supplemental Retirement Board of Trustees established in G.S. 135-96. The Department of State Treasurer and the Board of Trustees shall create a Supplemental Retirement Income Plan as of January 1, 1985, to be administered under the provisions of this Article.

(b) The Supplemental Retirement Income Plan shall have the power and privileges of a corporation and shall be known as the "Supplemental Retirement Income Plan of North Carolina" and by this name all of its business shall be transacted.

(c) The Department of State Treasurer and the Board of Trustees shall have full power and authority to adopt rules and regulations for the administration of the Plan, provided they are not inconsistent with the provisions of this Article. The Department of State Treasurer and Board of Trustees may appoint those agents, contractors, employees and committees as they deem advisable to carry out the terms and conditions of the Plan.

(d) The Department of State Treasurer and the Board of Trustees shall be charged with a fiduciary responsibility for managing all aspects of the Plan, including the receipt, maintenance, investment, and disposition of all Plan assets.

(e) The administrative costs of the Plan may be charged to members or deducted from members' accounts in accordance with nondiscriminatory procedures established by the Department of State Treasurer and Board of Trustees.

(f) Each institution of The University of North Carolina shall report the data and other information to the Supplemental Retirement Income Plan pertaining to participants in the Optional Retirement Program as shall be required by the Department of State Treasurer and the Board of Trustees.

(g) Each political subdivision of the State that sponsors a retirement or pension plan with members who are members of the Supplemental Retirement Income Plan shall report the data and other information to the Plan pertaining to members of the retirement or pension plan as shall be required by the Department of State Treasurer and the Board of Trustees. (1983 (Reg. Sess., 1984), c. 975; 1985, c. 403, s. 1; 1989 (Reg. Sess., 1990), c. 948, s. 2; 2008-132, s. 1.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2009. The second version of subsection (a) set out above is effective July 1, 2009.

Editor's Note. — Session Laws 2008-132, s. 4, provides: "Notwithstanding the provisions of G.S. 135-91, G.S. 143B-426.24, or any other provision of law, effective from July 1, 2008, through June 30, 2009, the North Carolina 401(k) Plan and the North Carolina Public Employee Deferred Compensation Plan shall be administered by a transitional Board of Trustees. The transitional Board of Trustees shall consist of nine members, as follows:

"(1) The two members of the Board of Trustees of the North Carolina 401(k) Plan who serve by virtue of their appointment to the Board of Trustees of the Teachers' and State Employees' Retirement System by the General Assembly pursuant to G.S. 135-6(b)(4);

"(2) The two members of the Board of Trustees of the North Carolina Deferred Compensation Plan appointed by the General Assembly pursuant to G.S. 143B-426.24(2) and (3);

"(3) Two of the members of the Board of Trustees of the North Carolina 401(k) Plan who serve by virtue of their appointment to the Board of Trustees of the Teachers' and State Employees' Retirement System by the Governor pursuant to G.S. 135-6(b)(3), to be determined by the Governor;

"(4) Two of the members of the Board of Trustees of the North Carolina Deferred Compensation Plan appointed by the Governor pursuant to G.S. 143B-426.24(1), to be determined by the Governor;

"(5) The State Treasurer, ex officio, who shall serve as Chair."

Effect of Amendments. — Session Laws 2008-132, s. 1, effective July 1, 2009, substituted "the Supplemental Retirement Board of Trustees established in G.S. 135-96" for "a Board of Trustees consisting of the Board of Trustees of the Teachers' and State Employees' Retirement System and the Board of Trustees of the Local Governmental Employees' Retirement System" in the first sentence of subsection (a).

§ 135-96. (Effective July 1, 2009) Supplemental Retirement Board of Trustees.

(a) The Supplemental Retirement Board of Trustees is established to administer the Supplemental Retirement Income Plan established under the provisions of this Article and the North Carolina Public Employee Deferred Compensation Plan established under G.S. 143B-426.24.

(b) The Board consists of nine voting members, as follows:

(1) Six persons appointed by the Governor who have experience in finance and investments, one of whom shall be a State employee;

(2) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives;

(3) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate; and

(4) The State Treasurer, ex officio, who shall be the Chair.

(c) The initial appointments by the General Assembly and two of the Governor's initial appointments shall be for one-year terms. The remainder of the initial appointments shall be for two-year terms. At the expiration of these initial terms, appointments shall be for two years and shall be made by the appointing authorities designated in subsection (b) of this section. A member shall continue to serve until the member's successor is duly appointed, but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve more than three consecutive two-year terms.

(d) Other than ex officio members, members appointed by the Governor shall serve at the Governor's pleasure. An ex officio member may designate in writing, filed with the Board, any employee of the member's department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting. (2008-132, s. 2.)

Editor's Note. — Session Laws 2008-132, s. 6, makes this section effective July 1, 2009.

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ARTICLE 2.

Powers and Duties of Department and Board of Transportation.

§ 136-18. Powers of Department of Transportation.

The said Department of Transportation is vested with the following powers:

(1) The general supervision over all matters relating to the construction of the State highways, letting of contracts therefor, and the selection of

materials to be used in the construction of State highways under the authority of this Chapter.

(2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, broadband communications, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

(3) To provide for such road materials as may be necessary to carry on the work of the Department of Transportation, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owning a deposit of sand, gravel or other material, necessary, for the construction of the system of State highways provided herein, has entered into a contract to furnish the Department of Transportation any of such material, at a price to be fixed by said Department of Transportation, thereafter the Department of Transportation shall have the right to condemn the necessary right-of-way under the provisions of Article 9 of Chapter 136, to connect said deposit with any part of the system of State highways or public carrier, provided that easements to material deposits, condemned under this Article shall not become a public road and the condemned easement shall be returned to the owner as soon as the deposits are exhausted or abandoned by the Department of Transportation.

(4) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the Department of Transportation with other public bodies, corporations, or persons.

(5) To make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the Department of Transportation shall

constitute a Class 1 misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns, except the Department of Transportation may regulate parking upon any street which forms a link in the State highway system, if said street be maintained with State highway funds.

(6) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the State highway system, which information shall be a part of the public records of the State, and upon which information the Department of Transportation shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(7) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the State highway system from date of acquiring said roads. The Department of Transportation shall have authority to maintain all streets constructed by the Department of Transportation in towns of less than 3,000 population by the last census, and such other streets as may be constructed in towns and cities at the expense of the Department of Transportation, whenever in the opinion of the Department of Transportation it is necessary and proper so to do.

(8) To give suitable names to State highways and change the names as determined by the Board of Transportation of any highways that shall become a part of the State system of highways.

(9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except (i) for materials displayed in welcome centers in accordance with G.S. 136-89.56, and (ii) for vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Health and Human Services, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor and each day's use shall constitute a separate offense.

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the

location of telephone, telegraph, electric or other lines, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor.

(11) To regulate, abandon and close to use, grade crossings on any road designated as part of the State highway system, and whenever a public highway has been designated as part of the State highway system and the Department of Transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Department of Transportation shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Department of Transportation shall have power to close to use and abandon such grade crossing and any other crossing adjacent thereto.

(12) The Department of Transportation shall have such powers as are necessary to comply fully with the provisions of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), as amended, and all other federal aid acts and programs the Department is authorized to administer. The said Department of Transportation is hereby authorized to enter into all contracts and agreements with the United States government relating to survey, construction, improvement and maintenance of roads, urban area traffic operations studies and improvement projects on the streets on the State highway system and on the municipal system in urban areas, under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Transportation or otherwise provided by federal acts, and to do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future aid acts of Congress for the construction or improvement and maintenance of federal aid of State highways. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the Department of Transportation and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Department of Transportation to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000).

(12a) The Department of Transportation shall have such powers as are necessary to establish, administer, and receive federal funds for a transportation infrastructure banking program as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, as amended, and the National Highway System Designation Act of 1995, Pub. L. 104-59, as amended. The Department of Transportation is authorized to apply for, receive, administer, and comply with all conditions and requirements related to federal financial assistance necessary to fund the infrastructure banking program. The infrastructure banking program established by the Department of Transportation may utilize federal and available State funds for the purpose of providing loans or other financial assistance to governmental units, including toll authorities, to finance the costs of transportation projects authorized by the above federal aid acts. Such loans or other financial assistance shall be subject to repayment and conditioned upon the establishment of such security and the payment of such fees and interest rates as the Department of Transportation may deem necessary. The Department of Transportation is authorized to apply a municipality's share of funds allocated under G.S. 136-41.1 or G.S. 136-44.20 as necessary to ensure repayment of funds advanced under the infrastructure banking program. The Department of Transportation shall establish jointly, with the State Treasurer, a separate infrastructure banking account with necessary fiscal controls and accounting procedures. Funds credited to this account shall not revert, and interest and other investment income shall accrue to the account and may be used to provide loans and other financial assistance as provided under this subdivision. The Department of Transportation may establish such rules and policies as are necessary to establish and administer the infrastructure banking program. The infrastructure banking program authorized under this subdivision shall not modify the regional distribution formula for the distribution of funds established by G.S. 136-17.2A. Governmental units may apply for loans and execute debt instruments payable to the State in order to obtain loans or other financial assistance provided for in this subdivision. The Department of Transportation shall require that applicants shall pledge as security for such obligations revenues derived from operation of the benefited facilities or systems, other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of such governmental units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this subdivision. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments to the State without any public bidding therefor. The Local Government Commission shall review and approve proposed loans to applicants pursuant to this subdivision under the provisions of Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. Loans authorized by this subdivision shall be outstanding debt for the purpose of Article 10, Chapter 159 of the General Statutes.

(12b) To issue "GARVEE" bonds (Grant Anticipation Revenue Vehicles) or other eligible debt-financing instruments to finance federal-aid highway projects using federal funds to pay a portion of principal, interest, and related bond issuance costs, as authorized by 23 U.S.C. § 122, as amended (the National Highway System Designation Act of 1995, Pub. L. 104-59). These bonds shall be issued by the State Treasurer on behalf of the Department and shall be issued pursuant to an order adopted by the Council of State under G.S. 159-88. The State Treasurer shall develop and adopt appropriate debt instruments, consistent with the terms of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for use under this subdivision. Prior to issuance of any "GARVEE" or other eligible debt instrument using federal funds to pay a portion of principal, interest, and related bond issuance costs, the State Treasurer shall determine (i) that the total outstanding principal of such debt does not exceed the total amount of federal transportation funds authorized to the State in the prior federal fiscal year; or (ii) that the maximum annual principal and interest of such debt does not exceed fifteen percent (15%) of the expected average annual federal revenue shown for the seven-year period in the most recently adopted Transportation Improvement Program. Notes issued under the provisions of this subdivision may not be deemed to constitute a debt or liability of the State or of any political subdivision thereof, or a pledge of the full faith and credit of the State or of any political subdivision thereof, but shall be payable solely from the funds and revenues pledged therefor. All the notes shall contain on their face a statement to the effect that the State of North Carolina shall not be obligated to pay the principal or the interest on the notes, except from the federal transportation fund revenues as shall be provided by the documents governing the revenue note issuance, and that neither the faith and credit nor the taxing power of the State of North Carolina or of any of its political subdivisions is pledged to the payment of the principal or interest on the notes. The issuance of notes under this Part shall not directly or indirectly or contingently obligate the State or any of its political subdivisions to levy or to pledge any form of taxation whatever or to make any appropriation for their payment.

(13) The Department of Transportation may construct and maintain all walkways and driveways within the Mansion Square in the City of Raleigh and the Western Residence of the Governor in the City of Asheville including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(14) The Department of Transportation shall have authority to provide roads for the connection of airports in the State with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.

(15) The Department of Transportation shall have authority to provide facilities for the use of waterborne traffic and recreational uses by establishing connections between the highway system and the navigable and nonnavigable waters of the State by means of connecting roads and piers. Such facilities for recreational purposes shall be funded from funds available for safety or enhancement purposes.

(16) The Department of Transportation, pursuant to a resolution of the Board of Transportation, shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights-of-way or for the widening of existing rights-of-way or the clearing of obstructions that, in the

opinion of the Department of Transportation, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the Department of Transportation has agreed in writing to accept the property so acquired in exchange for that to be used by the Department of Transportation, and when, in the opinion of the Department of Transportation, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.

(17) The Department of Transportation is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the state-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. Said Department of Transportation is further authorized to construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The Department of Transportation is further authorized to construct, pave, and maintain all other driveways and entrances to the public schools leading from public roads not required in the preceding portion of this subdivision.

(18) To cooperate with appropriate agencies of the United States in acquiring rights-of-way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to State highways.

(19) To prohibit the erection of any informational, regulatory, or warning signs within the right-of-way of any highway project built within the corporate limits of any municipality in the State where the funds for such construction are derived in whole or in part from federal appropriations expended by the Department of Transportation, unless such signs have first been approved by the Department of Transportation.

(20) The Department of Transportation is hereby authorized to maintain and keep in repair a suitable way of ingress and egress to all public or church cemeteries or burial grounds in the State notwithstanding the fact that said road is not a part of the state-maintained system of roads. For the purpose of this subdivision a public or church cemetery or burial ground shall be defined as a cemetery or burial ground in which there are buried or permitted to be buried deceased persons of the community in which said cemetery or burial ground is located, but shall not mean a privately owned cemetery operated for profit or family burial plots.

(21) The Department of Transportation is hereby authorized and directed to remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of such animals by burial or otherwise. In cases where there is evidence of ownership upon the body of any dead dog, the Department of Transportation shall take reasonable steps to notify the owner thereof by mail or other means.

(22) No airport or aircraft landing area shall be constructed or altered where such construction or alteration when undertaken or completed may reasonably affect motor vehicle operation and safety on adjoining public roads except in accordance with a written permit from the Department of Transportation or its duly authorized officers. The Department of Transportation is authorized and empowered to regulate airport and aircraft landing area construction and alteration in order to preserve safe clearances between highways and airways and

the Department of Transportation is authorized and empowered to make rules, regulations, and ordinances for the preservation of safe clearances between highways and airways. The Department of Transportation shall be responsible for determining safe clearances and shall fix standards for said determination which shall not exceed the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal Aid Highway Act of 1958. Any person, firm, corporation or airport authority constructing or altering an airport or aircraft landing area without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or violating the provisions of the rules, regulations or ordinances promulgated under the authority of this section shall be guilty of a Class 1 misdemeanor; provided, that this subdivision shall not apply to publicly owned and operated airports and aircraft landing areas receiving federal funds and subject to regulation by the Federal Aviation Authority.

(23) When in the opinion of the Department of Transportation an economy in the expenditure of public funds can be effected thereby, the Department of Transportation shall have authority to enter into agreements with adjoining states regarding the planning, location, engineering, right-of-way acquisition and construction of roads and bridges connecting the North Carolina State highway system with public roads in adjoining states, and the Department of Transportation shall have authority to do planning, surveying, locating, engineering, right-of-way acquisition and construction on short segments of roads and bridges in adjoining states with the cost of said work to be reimbursed by the adjoining state, and may also enter into agreements with adjoining states providing for the performance of and reimbursement to the adjoining state of the cost of such work done within the State of North Carolina by the adjoining state: Provided, that the Department of Transportation shall retain the right to approve any contract for work to be done in this State by an adjoining state for which the adjoining state is to be reimbursed.

(24) The Department of Transportation is further authorized to pave driveways leading from state-maintained roads to rural fire district firehouses which are approved by the North Carolina Fire Insurance Rating Bureau and to facilities of rescue squads furnishing ambulance services which are approved by the North Carolina State Association of Rescue Squads, Inc.

(25) The Department of Transportation is hereby authorized and directed to design, construct, repair, and maintain paved streets and roads upon the campus of each of the State's institutions of higher education, at state-owned hospitals for the treatment of tuberculosis, state-owned orthopedic hospitals, juvenile correction centers, mental health hospitals and retarded centers, schools for the deaf, and schools for the blind, when such construction, maintenance, or repairs have been authorized by the General Assembly in the appropriations bills enacted by the General Assembly. Cost for such construction, maintenance, and repairs shall be borne by the Highway Fund. Upon the General Assembly authorizing the construction, repair, or maintenance of a paved road or drive upon any of the above-mentioned institutions, the Department of Transportation shall give such project priority to insure that it shall be accomplished as soon as feasible, at the minimum cost to the State, and in any event during the biennium for which the authorization shall have been given by the General Assembly.

(26) The Department of Transportation, at the request of a representative from a board of county commissioners, is hereby authorized to acquire by condemnation new or additional right-of-way to construct, pave or otherwise improve a designated State-maintained secondary road upon presentation by said board to the Department of Transportation of a duly verified copy of the minutes of its meeting showing approval of such request by a majority of its members and by the further presentation of a petition requesting such improvement executed by the abutting owners whose frontage on said secondary road shall equal or exceed seventy-five percent (75%) of the linear front footage along the secondary road sought to be improved. This subdivision shall not be construed to limit the authority of the Department of Transportation to exercise the power of eminent domain.

(27) The Department of Transportation is authorized to establish policies and promulgate rules providing for voluntary local government, property owner or highway user participation in the costs of maintenance or improvement of roads which would not otherwise be necessary or would not otherwise be performed by the Department of Transportation and which will result in a benefit to the property owner or highway user. By way of illustration and not as a limitation, such costs include those incurred in connection with drainage improvements or maintenance, driveway connections, dust control on unpaved roads, surfacing or paving of roads and the acquisition of rights-of-way. Local government, property owner and highway user participation can be in the form of materials, money, or land (for right-of-way) as deemed appropriate by the Department of Transportation. The authority of this section shall not be used to authorize, construct or maintain toll roads or bridges.

(28) The Department of Transportation may obtain land, either by gift, lease or purchase which shall be used for the construction and maintenance of ridesharing parking lots. The Department may design, construct, repair, and maintain ridesharing parking facilities.

(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day or more.

(29a) To coordinate with all public and private entities planning schools to provide written recommendations and evaluations of driveway access and traffic operational and safety impacts on the State highway system resulting from the development of the proposed sites. All public and private entities shall, upon acquiring land for a new school or prior to beginning construction of a new school, relocating a school, or expanding an existing school, request from the Department a written evaluation and written recommendations to ensure that all proposed access points comply with the criteria in the current North Carolina Department of Transportation "Policy on Street and Driveway Access". The Department shall provide the written evaluation and recommendations within a reasonable time, which shall not exceed 60 days. This subdivision shall not be construed to require the public or private entities planning schools to meet the recommendations made by the Department, except those highway improvements that are required for safe ingress and egress to the State highway system.

(30) Consistent with G.S. 130A-309.14(a1), the Department of Transportation shall review and revise its bid procedures and specifications set forth in Chapter 136 of the General Statutes to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The Department of Transportation shall require the purchase or use of such supplies and products in the construction and maintenance of highways and bridges to the extent that the use is practicable and cost-effective. The Department shall prepare an annual report on October 1 of each year to the Environmental Review Commission as required under G.S. 130A-309.14(a1).

(31) The Department of Transportation is authorized to designate portions of highways as scenic highways, and combinations of portions of highways as scenic byways, for portions of those highways that possess unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural or ethnic features. The Department shall remove, upon application, from any existing or future scenic highway or scenic byway designation, highway sections that:

a. Have no scenic value,

b. Have been designated or would be so designated solely to preserve system continuity, and

c. Are adjacent to property on which is located one or more permanent structures devoted to a commercial or industrial activity and on which a commercial or industrial activity is actually conducted, in an unzoned area or an area zoned commercial or industrial pursuant to a State or local zoning ordinance or regulation, except for commercial activity related to tourism or recreation.

The Department shall adopt rules and regulations setting forth the criteria and procedures for the designation of scenic highways and scenic byways under this subsection.

Those portions of highways designated as scenic by the Department prior to July 1, 1993, are considered to be designated as scenic highways and scenic byways under this subsection but the Department shall remove from this designation portions of those highway sections that meet the criteria set forth in this subsection, if requested.

(32) The Department of Transportation may perform dredging services, on a cost reimbursement basis, for a unit of local government if the unit cannot obtain the services from a private company at a reasonable cost. A unit of local government is considered to be unable to obtain dredging services at a reasonable cost if it solicits bids for the dredging services in accordance with Article 8 of Chapter 143 of the General Statutes and does not receive a bid, considered by the Department of Transportation Engineering Staff, to be reasonable.

(33) The Department of Transportation is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees. If the Department finds any equipment or facilities to be unsafe, it shall at once notify the railroad company and require the company to repair the equipment or facilities.

(34) The Department of Transportation may conduct, in a manner consistent with federal law, a program of accident prevention and public

safety covering all railroads and may investigate the cause of any railroad accident. In order to facilitate this program, any railroad involved in an accident that must be reported to the Federal Railroad Administration shall also notify the Department of Transportation of the occurrence of the accident.

(35) To establish rural planning organizations, as provided in Article 17 of this Chapter.

(36) To oversee the safety of fixed guideway transit systems in the State not regulated by the Federal Railroad Administration, pursuant to the Intermodal Surface Transportation Efficiency Act of 1991 (49 U.S.C. § 5330). The Department shall adopt rules in conformance with 49 U.S.C. § 5330 concerning its oversight of the safety of fixed guideway transit systems.

(37) To permit private use of and encroachment upon the right-of-way of a State highway or road for the purpose of construction and maintenance of a privately owned bridge for pedestrians or motor vehicles, if the bridge shall not unreasonably interfere with or obstruct the public use of the right-of-way. Any agreement for an encroachment authorized by this subdivision shall be approved by the Board of Transportation, upon a finding that the encroachment is necessary and appropriate, in the sole discretion of the Board. Locations, plans, and specifications for any pedestrian or vehicular bridge authorized by the Board for construction pursuant to this subdivision shall be approved by the Department of Transportation. For any bridge subject to this subdivision, the Department shall retain the right to reject any plans, specifications, or materials used or proposed to be used, inspect and approve all materials to be used, inspect the construction, maintenance, or repair, and require the replacement, reconstruction, repair, or demolition of any partially or wholly completed bridge that, in the sole discretion of the Department, is unsafe or substandard in design or construction. An encroachment agreement authorized by this subdivision may include a requirement to purchase and maintain liability insurance in an amount determined by the Department of Transportation. The Department shall ensure that any bridge constructed pursuant to this subdivision is regularly inspected for safety. The owner shall have the bridge inspected every two years by a qualified private engineering firm based on National Bridge Inspection Standards and shall provide the Department copies of the Bridge Inspection Reports where they shall be kept on file. Any bridge authorized and constructed pursuant to this subdivision shall be subject to all other rules and conditions of the Department of Transportation for encroachments.

(38) To enter into agreements with municipalities, counties, governmental entities, or nonprofit corporations to receive funds for the purpose of advancing the construction schedule of a project identified in the Transportation Improvement Program. If these funds are subject to repayment by the Department, prior to receipt of funds, reimbursement of all funds received by the Department shall be shown in the existing Transportation Improvement Program and shall be reimbursed within seven years of receipt.

(39) To enter into partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, with priority given to highways, roads, streets, and bridges,

and to plan, design, develop, acquire, construct, equip, maintain, and operate highways, roads, streets, bridges, and existing rail, as well as properties adjoining existing rail lines in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision. Any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to an agreement entered into under this section shall comply with the competitive bidding requirements of Article 2 of this Chapter.

(40) To expand public access to coastal waters in its road project planning and construction programs. The Department shall work with the Wildlife Resources Commission, other State agencies, and other government entities to address public access to coastal waters along the roadways, bridges, and other transportation infrastructure owned or maintained by the Department. The Department shall adhere to all applicable design standards and guidelines in implementation of this enhanced access. The Department shall report on its progress in expanding public access to coastal waters to the Joint Legislative Commission on Seafood and Aquaculture and to the Joint Legislative Transportation Oversight Commission no later than March 1 of each year. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C.S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, ss. 1, 6; 1987, c. 311; c. 417, ss. 1, 2; 1989, c. 158; 1989 (Reg. Sess. 1990), c. 962, s. 1; 1993, c. 197, s. 2; c. 488, s. 1; c. 524, s. 4; c. 539, ss. 974-977; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 247, s. 1; c. 507, s. 18.2; 1995 (Reg. Sess., 1996), c. 673, s. 4; 1996, 2nd Ex. Sess., c. 18, s. 19.10(a); 1997-428, s. 1; 1997-443, s. 11A.118(a); 2000-123, s. 1; 2000-140, s. 102; 2001-424, s. 27.27; 2003-184, s. 1; 2003-267, s. 1; 2004-168, s. 1; 2005-403, s. 2; 2006-230, s. 1(a); 2007-428, s. 1; 2007-439, s. 1; 2007-485, s. 3.1; 2008-164, s. 1; 2008-180, ss. 2, 8.)

Editor's Note. —

Session Laws 2008-107, s. 25.2, provides: "(a) The Department of Transportation shall cease annual production of the North Carolina State Transportation Map and Coastal Boating Guide and shall produce a biennial North Carolina State Transportation Map and may provide funding for a biennial Coastal Boating Guide, in conjunction with the Wildlife Resources Commission, beginning in the 2008-2009 fiscal year.

"(b) The Department shall provide a written report to the Joint Legislative Transportation Oversight Committee on the biennial map production plan and identify any cost savings for nonproduction years. The report shall also include historical budget and production information for the past five years. The report is due by March 1, 2009."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-164, s. 1, effective August 3, 2008, in subdivision (39), added "and to plan, design, develop, acquire, construct, equip, maintain, and operate highways, roads, streets, bridges, and existing rail, as well as properties adjoining existing rail lines in this State" at the end of the first sentence, and added the last sentence.

Session Laws 2008-180, ss. 2 and 8, effective August 4, 2008, in subdivision (2), inserted "broadband communications"; and in subdivision (27), inserted "local government" in the first sentence, and inserted "Local government" at the beginning of the next-to-last sentence.

§ 136-18.01. Consultation required for welcome and visitor centers.

Editor's Note. —

Session Laws 2007-356, s. 3, as amended by Session Laws 2008-107, s. 13.3, provides: "Nothing in this act shall be interpreted to prohibit or restrict the Department of Transportation from constructing visitor center buildings in Randolph County and Wilkes County that were in the planning, design, or construction phase prior to the effective date of this act."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 136-28.6. Participation by the Department of Transportation with private developers.

(a) The Department of Transportation may participate in private engineering and construction contracts for State highways.

(b) In order to qualify for State participation, the project must be:

(1) The construction of a street or highway on the Transportation Improvement Plan adopted by the Department of Transportation; or

(2) The construction of a street or highway on a mutually adopted transportation plan that is designated a Department of Transportation responsibility.

(c) Only those projects in which the right-of-way is furnished without cost to the Department of Transportation are eligible.

(d) The Department's participation shall be limited to fifty percent (50%) of the amount of any engineering contract and/or any construction contract let for the project.

(e) Department of Transportation participation in the contracts shall be limited to cost associated with normal practices of the Department of Transportation.

(f) Plans for the project must meet Department of Transportation standards and shall be approved by the Department of Transportation.

(g) Projects shall be constructed in accordance with the plans and specifications approved by the Department of Transportation.

(h) The Secretary shall report in writing, on a quarterly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between a private developer and the Department of Transportation for participation in private engineering and construction contracts under this section.

(i) Counties and municipalities may participate financially in private engineering, land acquisition, and construction contracts for projects pertaining to streets or highways which meet the requirements of subsection (b) of this section within their jurisdiction. (1987, c. 860, ss. 1, 2; 1989, c. 749, s. 1; 1991,

c. 272, s. 1; 1993, c. 183, s. 1; 1995, c. 358, s. 5; c. 437, s. 3; c. 447, ss. 1, 2; 2002-170, s. 1; 2008-164, s. 2.)

Effect of Amendments. — Session Laws 2008-164, s. 2, effective August 3, 2008, rewrote the section heading; in subsection (c), substituted "the right-of-way is furnished" for "the developer furnishes the right-of-way"; deleted "by the developer" preceding "for the project" in subsection (d); substituted "Department of Transportation participation" for "Participation" in subsection (e); and rewrote subsection (i).

Article 2E.

Transportation Corridor Official Map Act.

§ 136-44.50. Transportation corridor official map act.

(a) A transportation corridor official map may be adopted or amended by any of the following:

(1) The governing board of any local government for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2 or for any proposed public transportation corridor included in the adopted long-range transportation plan.

(2) The Board of Transportation for any portion of the existing or proposed State highway system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.

(3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.

(4) The North Carolina Turnpike Authority for any project being studied pursuant to G.S. 136-89.183.

(5) The Wilmington Urban Area Metropolitan Planning Organization for any project that is within its urbanized boundary and identified in G.S. 136-179.

Before a city adopts a transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city shall obtain approval from the Board of County Commissioners.

(a1) No transportation corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

(1) The governing board of the city, the county, the regional transportation authority, the North Carolina Turnpike Authority, or the Department of Transportation has held a public hearing in each county affected by the map on the proposed map or amendment. Notice of the hearing shall be provided:

a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the transportation corridor to be designated is located.

b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the transportation corridor passes.

c. By posting copies of the proposed transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

d. By first-class mail sent to each property owner affected by the corridor. The notice shall be sent to the address listed for the owner in the county tax records.

(2) A permanent certified copy of the transportation corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.

(3) The names of all property owners affected by the corridor have been submitted to the Register of Deeds.

(b) Transportation corridor official maps and amendments shall be distributed and maintained in the following manner:

(1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk and in the office of the district engineer.

(2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a transportation corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate description. The register of deeds shall collect a fee of five dollars ($5.00) for each map sheet or page recorded.

(4) The names submitted as required under subdivision (a)(3) of this section shall be indexed in the "grantor" index by the Register of Deeds.

(c) Repealed by Session Laws 1989, c. 595, s. 1.

(d) Within one year following the establishment of a transportation corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work on the environmental impact statement or preliminary engineering within the one-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the transportation corridor. A local government may prepare environmental impact studies and preliminary engineering work in connection with the establishment of a transportation corridor official map or amendments to a transportation corridor official map. When a city or county prepares a transportation corridor official map for a street or highway that has been designated a State responsibility pursuant to G.S. 136-66.2, the environmental impact study and preliminary engineering work shall be reviewed and approved by the Department of Transportation. An amendment to a corridor shall not extend the one-year period provided by this section unless it establishes a substantially different corridor in a primarily new location.

(e) The term "amendment" for purposes of this section includes any change to a transportation corridor official map, including:

(1) Failure of the Department of Transportation, the North Carolina Turnpike Authority, a city, a county, or a regional transportation

authority to begin work on an environmental impact statement or preliminary engineering as required by this section; or

(2) Deletion of the corridor from the transportation corridor official map by action of the Board of Transportation, the North Carolina Turnpike Authority, or deletion of the corridor from the long-range transportation plan of a city, county, or regional transportation authority by action of the city, county, or regional transportation authority governing Board.

(f) The term "transportation corridor" as used in this Article does not include bikeways or greenways. (1987, c. 747, s. 19; 1989, c. 595, s. 1; 1998-184, s. 1; 2005-275, s. 1; 2005-418, s. 9; 2006-237, s. 1; 2008-180, s. 3.)

Effect of Amendments. — Session Laws 2008-180, s. 3, effective August 4, 2008, in subdivision (a)(1), substituted "local government" for "city"; in subdivision (a1)(1), inserted "the county" near the beginning; in subsection (d), substituted "local government" for "city" in the third sentence, inserted "or county" in the fourth sentence; in subdivision (e)(1), inserted "a county"; and in subdivision (e)(2), inserted "county" both times it appears.

§ 136-44.52. Variance from transportation corridor official map.

(a) The Department of Transportation, the regional public transportation authority, the regional transportation authority, or the local government which initiated the transportation corridor official map shall establish procedures for considering petitions for variance from the requirements of G.S. 136-44.51.

(b) The procedure established by the State shall provide for written notice to the Mayor and Chairman of the Board of County Commissioners of any affected city or county, and for the hearing to be held in the county where the affected property is located.

(c) Local governments may provide for petitions for variances to be heard by the board of adjustment or other boards or commissions which can hear variances authorized by G.S. 160A-388. The procedures for boards of adjustment shall be followed except that no vote greater than a majority shall be required to grant a variance.

(c1) The procedure established by a regional public transportation authority or a regional transportation authority pursuant to subsection (a) of this section shall provide for a hearing de novo by the Department of Transportation for any petition for variance which is denied by the regional public transportation authority or the regional transportation authority. All hearings held by the Department of Transportation under this subsection shall be conducted in accordance with procedures established by the Department of Transportation pursuant to subsection (a) of this section.

(d) A variance may be granted upon a showing that:

(1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and

(2) The requirements of G.S. 136-44.51 result in practical difficulties or unnecessary hardships. (1987, c. 747, s. 19; 1998-184, s. 1; 2008-180, s. 4.)

Effect of Amendments. — Session Laws 2008-180, s. 4, effective August 4, 2008, in subsection (a), substituted "local government" for "city"; and in subsection (c), substituted "local governments" for "cities" in the first sentence.

§ 136-44.53. Advance acquisition of right-of-way within the transportation corridor.

(a) After a transportation corridor official map is filed with the register of deeds, a property owner has the right of petition to the filer of the map for acquisition of the property due to an imposed hardship. The Department of Transportation, the regional public transportation authority, the regional transportation authority, or the local government that initiated the transportation corridor official map may make advanced acquisition of specific parcels of property when that acquisition is determined by the respective governing board to be in the best public interest to protect the transportation corridor from development or when the transportation corridor official map creates an undue hardship on the affected property owner. The procedure established by a regional public transportation authority or a regional transportation authority pursuant to subsection (b) of this section shall provide for a hearing de novo by the Department of Transportation for any request for advance acquisition due to hardship that is denied by an authority. All hearings held by the Department under this subsection shall be conducted in accordance with procedures established by the Department pursuant to subsection (b) of this section. Any decision of the Department pursuant to this subsection shall be final and binding. Any property determined eligible for hardship acquisition shall be acquired within three years of the finding or the restrictions of the map shall be removed from the property.

(b) Prior to making any advanced acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective governing board which initiated the transportation corridor official map shall develop and adopt appropriate policies and procedures to govern the advanced acquisition of right-of-way and to assure that the advanced acquisition is in the best overall public interest.

(c) When a local government makes an advanced right-of-way acquisition of property within a transportation corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the local government for the cost of any advanced right-of-way acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The local government shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a local government is authorized to expend its funds for the protection of rights-of-way shown on a duly adopted transportation corridor official map whether the right-of-way to be acquired is located inside or outside the municipal corporate limits. (1987, c. 747, s. 19; 1998-184, s. 1; 2008-180, s. 5; 2008-187, s. 47.7.)

Editor's Note. — Session Laws 2008-187, s. 47.7, which amended subsection (d), was contingent on House Bill 2314, 2007 Regular Session (Session Laws 2008-180) becoming law, which it did.

Effect of Amendments. — Session Laws 2008-180, s. 5, effective August 4, 2008, in subsection (a), substituted "local government that" for "city which"; in subsection (c), substituted "local government" for "city" three times; and in subsection (d), substituted "local government" for "municipality," and substituted "its funds" for "municipal funds."

Session Laws 2008-187, s. 47.7, effective August 7, 2008, substituted "outside the municipal" for "outside a municipal" in subsection (d).

ARTICLE 3A.

Streets and Highways in and around Municipalities.

§ 136-66.3. Local government participation in improvements to the State highway system.

(a) Municipal Participation Authorized. — A municipality may, but is not required to, participate in the right-of-way and construction cost of a State highway improvement approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in the municipality or its extraterritorial jurisdiction.

(b) Process for Initiating Participation. — A municipality interested in participating in the funding of a State highway improvement project may submit a proposal to the Department of Transportation. The Department and the municipality shall include their respective responsibilities for a proposed municipal participation project in any agreement reached concerning participation.

(c) Type of Participation Authorized. — A municipality is authorized and empowered to acquire land by dedication and acceptance, purchase, or eminent domain, and make improvements to portions of the State highway system lying within or outside the municipal corporate limits utilizing local funds that have been authorized for that purpose. All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of Transportation.

(c1) No TIP Disadvantage for Participation. — If a county or municipality participates in a State highway system improvement project, as authorized by this section, or by G.S. 136-51 and G.S. 136-98, the Department shall ensure that the local government's participation does not cause any disadvantage to any other project in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(c2) Distribution of State Funds Made Available by County or Municipal Participation. — Any State or federal funds allocated to a project that are made available by county or municipal participation in a project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding region that the funding was allocated to under the distribution formula contained in G.S. 136-17.2A.

(c3) Limitation on Agreements. — The Department shall not enter into any agreement with a county or municipality to provide additional total funding for highway construction in the county or municipality in exchange for county or municipal participation in any project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) Authorization to Participate in Development-Related Improvements. — When in the review and approval by a local government of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the local government is authorized to construct, or have constructed, said improvements to the State highway system in vicinity of the development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, and drainage facilities. All improvements to the State highway system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) Authorization to Participate in Project Additions. — Pursuant to an agreement with the Department of Transportation, a county or municipality may reimburse the Department of Transportation for the cost of all improvements, including additional right-of-way, for a street or highway improvement projects approved by the Board of Transportation under G.S. 143B-350(f)(4), that are in addition to those improvements that the Department of Transportation would normally include in the project.

(e1) Reimbursement Procedure. — Upon request of the county or municipality, the Department of Transportation shall allow the local government a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs necessary for the project. The Department of Transportation shall not charge a local government any interest during the initial three years.

(f) Report to General Assembly. — The Department shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between counties, municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) Local Government Acquisition of Rights-of-Way. — In the acquisition of rights-of-way for any State highway system street or highway, the county or municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, counties and municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "county," "municipality" or local governing body, and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "county or municipal clerk". It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the county or municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) Department Authority Concerning Rights-of-Way. — In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway system.

(i) Changes to Local Government Participation Agreement. — Either the local government or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Local Governments Party to Rights-of-Way Proceeding. — Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way.

(k) Repealed by Session Laws 2008-180, s. 6, effective August 4, 2008. (1959, c. 687, s. 3; 1965, c. 867; 1967, c. 1127; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1987, c. 747, s. 3; 1989, c. 595, ss. 2, 3; 1991, c. 21, s. 1; 2000-188, s. 1; 2001-245, s. 2; 2008-180, s. 6.)

Effect of Amendments. — Session Laws 2008-180, s. 6, effective August 4, 2008, substituted "local government" for "municipal" and inserted "county or" preceding "municipal" or "municipality" throughout the section and in the catchline; in subsection (c1), inserted "or by G.S. 136-51 and G.S. 136-98," substituted "G.S. 143B-350(f)(4)" for "G.S. 143B-350(f)(4) and located outside the municipality"; in subsection (f), inserted "counties"; in subsection (g), in the first sentence, substituted "highway, the county or municipality" for "highway in or around a municipality, the municipality," in the second sentence, inserted "counties and," substituted "'county,' 'municipality' or local" for "'municipality' or municipal," and inserted "county or"; and deleted subsection (k), relating to Specified County Participation.

Article 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

CASE NOTES

Directed Verdict and Judgment Not Withstanding Verdict Unwarranted. — Because: (1) the Court of Appeals of North Carolina declined to add a fourth element to the landowners' burden of proof in the first part of the cartway proceeding; (2) the jury instruction on the element of the landowners' claim to establish the right to a cartway, requiring them to show that their land was being used for one of the purposes enumerated in the statute, conformed with the pattern jury instructions without the addition of the language suggested by the adjoining landowners and fairly and accurately stated the landowners' element of proof as to the use of their property; and (3) the instruction requested by the adjoining landowners gave undue emphasis to their claim the landowners' intended to use the land for future residential development, which, while not enumerated under the statute, did not defeat the landowners' right to a cartway, the trial court's orders denying both a directed verdict and a judgment notwithstanding the verdict were upheld on appeal. Jones v. Robbins, — N.C. App. —, 660 S.E.2d 118, 2008 N.C. App. LEXIS 901 (2008).

§ 136-69. Cartways, tramways, etc., laid out; procedure.

CASE NOTES

Directed Verdict and Judgment Not Withstanding Verdict Unwarranted. — Because: (1) the Court of Appeals of North Carolina declined to add a fourth element to the landowners' burden of proof in the first part of the cartway proceeding; (2) the jury instruction on the element of the landowners' claim to establish the right to a cartway, requiring them to show that their land was being used for one of the purposes enumerated in the statute, conformed with the pattern jury instructions without the addition of the language suggested by the adjoining landowners and fairly and accurately stated the landowners' element of proof as to the use of their property; and (3) the instruction requested by the adjoining landowners gave undue emphasis to their claim the landowners' intended to use the land for future residential development, which, while not enumerated under the statute, did not defeat the landowners' right to a cartway, the trial court's orders denying both a directed verdict and a judgment notwithstanding the verdict were upheld on appeal. Jones v. Robbins, — N.C. App. —, 660 S.E.2d 118, 2008 N.C. App. LEXIS 901 (2008).

ARTICLE 5.

Bridges.

§ 136-72. Load limits for bridges; penalty for violations.

Editor's Note. — Session Laws 2008-107, s. 25.18, provides: "(a) Of funds available to the Department of Transportation, the Department, in cooperation with the Center for Transportation and the Environment at North Carolina State University, shall conduct a pilot study on 50 bridges, located throughout the State in various ecosystems, of the installation of various types of storm water detention, collection, and filtering systems during new bridge construction over waterways. The Department may also retrofit existing bridges as part of its pilot study. Treatments and methods used in the pilot study shall include but not be limited to those treatments found effective by other states and new treatments identified through investigation and research which may be effective. Construction or retrofitting shall be initiated on at least 25 of the 50 bridges by July 1, 2009. Construction or retrofitting shall be initiated on the remaining bridge projects by January 1, 2010.

"(b) An interim report shall be made to the Joint Legislative Transportation Oversight Committee no later than July 1, 2009, that includes information which quantifies stormwater runoff at structures as well as the types of pollutants, the various treatments which will be constructed and evaluated to target these pollutant types, and a measurement and collection plan to determine effectiveness of the evaluated treatments.

"(c) A final report shall be made to the Joint Legislative Transportation Oversight Committee no later than July 1, 2010. The final report shall include as a minimum, the effectiveness of the treatments included in the study, costs of each treatment, and the costs of implementing effective treatments on new bridge construction projects as well as existing bridge retrofit projects for all bridges over waterways in the State."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 6H.

Public Toll Roads and Bridges.

Part 1. Turnpike Authority and Toll Projects.

§ 136-89.180. Legislative findings.

Editor's Note. —
Session Laws 2008-225, s. 1, added the Part 1 heading, and designated G.S. 136-89.180 through 136-89.198 as Part 1 of Article 6H, effective August 17, 2008.

§ 136-89.181. Definitions.

The following definitions apply to this Article:
(1) Department. — The North Carolina Department of Transportation.
(2) Turnpike Authority. — The public agency created by this Article.
(3) Authority Board. — The governing board of the Turnpike Authority.
(4) Turnpike project. — Either of the following:
  a. A road, bridge, or tunnel project planned, or planned and constructed, in accordance with the provisions of this Article.

b. A segment of the State highway system the Authority Board converts to a tolled highway pursuant to the authorization in G.S. 136-89.187.

(5) Turnpike system. — All Turnpike projects. (2002-133, s. 1; 2008-225, s. 3.)

Effect of Amendments. — Session Laws 2008-225, s. 3, effective August 17, 2008, rewrote the section.

§ 136-89.183. Powers of the Authority.

(a) The Authority shall have all of the powers necessary to execute the provisions of this Article, including the following:

(1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(2) To study, plan, develop, and undertake preliminary design work on up to nine Turnpike Projects. At the conclusion of these activities, the Turnpike Authority is authorized to design, establish, purchase, construct, operate, and maintain the following projects:

a. Triangle Expressway, including segments also known as N.C. 540, Triangle Parkway, and Western Wake Freeway in Wake and Durham Counties.

b. Gaston East-West Connector, also known as the Garden Parkway.

c. Monroe Connector/Bypass.

d. Cape Fear Skyway.

e. A bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia, pursuant to G.S. 136-89.183A.

f. Repealed by Session Laws 2008-225, s. 4, effective August 17, 2008.

Any other project proposed by the Authority in addition to the projects listed in this subdivision must be approved by the General Assembly prior to construction.

A Turnpike Project selected for construction by the Turnpike Authority shall be included in any applicable locally adopted comprehensive transportation plans and shall be shown in the current State Transportation Improvement Plan prior to the letting of a contract for the Turnpike Project.

(3) Repealed by Session Laws 2005-275, s. 2, effective August 12, 2005.

(4) To rent, lease, purchase, acquire, own, encumber, dispose of, or mortgage real or personal property, including the power to acquire property by eminent domain pursuant to G.S. 136-89.184.

(5) To fix, revise, charge, and collect tolls and fees for the use of the Turnpike Projects. Prior to the effective date of any toll or fee for use of a Turnpike Facility, the Authority shall submit a description of the proposed toll or fee to the Board of Transportation, the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations for review.

(6) To issue bonds or notes of the Authority as provided in this Article.

(6a) To invest the proceeds of bonds or notes of the Authority that are pending disbursement or other idle funds of the Authority in any investment authorized by G.S. 159-30.

(7) To establish, construct, purchase, maintain, equip, and operate any structure or facilities associated with the Turnpike System.

(8) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.

(9) To apply for, accept, and administer loans and grants of money or real or personal property from any federal agency, the State or its political subdivisions, local governments, or any other public or private sources available.

(10) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Article, in accordance with the review and comment requirements of G.S. 136-89.182(j).

(11) To utilize employees of the Department; to contract for the services of consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants; to employ administrative staff as may be required in the judgment of the Authority; and to fix and pay fees or compensation to the Department, contractors, and administrative employees from funds available to the Authority.

(12) To receive and use appropriations from the State and federal government.

(13) To adopt procedures to govern its procurement of services and delivery of Turnpike Projects.

(14) To perform or procure any portion of services required by the Authority.

(15) To use officers, employees, agents, and facilities of the Department for the purposes and upon the terms as may be mutually agreeable.

(16) To contract for the construction, maintenance, and operation of a Turnpike Project.

(17) To enter into partnership agreements with the Department of Transportation, agreements with political subdivisions of the State, and agreements with private entities, and to expend such funds as it deems necessary, pursuant to such agreements, for the purpose of financing the cost of acquiring, constructing, equipping, operating, or maintaining any Turnpike Project. An agreement entered under this subdivision requires the concurrence of the Board of Transportation if the Department of Transportation is a party to the agreement.

(18) To utilize incentives in any contract for development or construction of a Turnpike Project, in order to promote expedited delivery of the project.

(b) To execute the powers provided in subsection (a) of this section, the Authority shall determine its policies by majority vote of the members of the Authority Board present and voting, a quorum having been established. Once a policy is established, the Authority Board shall communicate it to the Executive Director or the Executive Director's designee, who shall have the sole and exclusive authority to execute the policy of the Authority. No member of the Authority Board shall have the responsibility or authority to give operational directives to any employee of the Authority other than the Executive Director or the Director's designee. (2002-133, s. 1; 2005-275, s. 2; 2006-228, s. 5; 2006-230, s. 1(b); 2008-225, s. 4.)

Effect of Amendments. —

Session Laws 2008-225, s. 4, effective August 17, 2008, rewrote subdivision (a)(2)a; added "also known as the Garden Parkway" at the end of subdivision (a)(2)b; added "/Bypass" at the end of subdivision (a)(2)c; added "pursuant to G.S. 136-89.183A" at the end of subdivision (a)(2)e; deleted subdivision (a)(2)f which read: "I-540 in Wake and Durham Counties"; and added subdivision (a)(6a).

§ 136-89.183A. Accelerated Pilot Toll Bridge Project.

(a) Findings. — The General Assembly finds that there is a need for a bridge connecting the Currituck County mainland to the Currituck County Outer Banks; that the bridge should be implemented as a toll bridge; that the bridge should be implemented in a manner that protects the natural environment and quality of life on the Outer Banks; and that the character of the existing road system in Currituck County and Dare County Outer Banks should be preserved.

(b) Contract to Construct Accelerated Pilot Toll Bridge Project. — The Authority shall contract with a single private firm to design, obtain all necessary permits for, and construct the toll bridge described in G.S. 136-89.183(a)(2), known as the Mid-Currituck Bridge, in order to provide accelerated, efficient, and cost-effective completion of the project.

(c) Preconstruction Participation. — In addition to the authority granted by G.S. 136-89.191, the Department shall participate in the cost of preconstruction activities related to the project described in this section, if requested by the Authority.

(d) Environmental Protection. — The Authority shall ensure that the Mid-Currituck Bridge is implemented in a manner that accomplishes all of the following:

(1) Ensures the preservation of water quality in Currituck Sound.

(2) Mitigates the environmental impact of the bridge on the Currituck County mainland and the Outer Banks.

(3) Reduces traffic congestion and vehicle miles traveled, and preserves the character of the existing road system, in Dare County and Currituck County on the Outer Banks.

(e) Report on Project. — The Authority shall report to the Joint Legislative Transportation Oversight Committee on December 1, 2005, and each December 1 thereafter until completion, on the progress of the accelerated pilot toll bridge project described in this section. (2005-275, s. 3; 2008-225, s. 11.)

Effect of Amendments. — Session Laws 2008-225, s. 11, effective August 17, 2008, added subsections (a) and (d); redesignated former subsections (a) and (b) as subsections (b) and (c); and in subsection (b), substituted "known as the Mid-Currituck Bridge" for "a bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia."

§ 136-89.187. Conversion of free highways prohibited.

The Authority Board is prohibited from converting any segment of the nontolled State Highway System to a toll facility, except for a segment of N.C. 540 under construction as of July 1, 2006, located in Wake County and extending from the N.C. 54 exit on N.C. 540 to the N.C. 55 exit on N.C. 540. No segment may be converted to a toll route pursuant to this section unless first approved by the Metropolitan Planning Organization (MPO) or Rural Planning Organization (RPO) of the area in which that segment is located. (2002-133, s. 1; 2006-228, s. 3; 2008-225, s. 5.)

Effect of Amendments. —

Session Laws 2008-225, s. 5, effective August 17, 2008, substituted "N.C. 540" for "Interstate 540," "County" for "and Durham Counties," and "the N.C. 54 exit on N.C. 540 to the N.C. 55 exit on N.C. 540" for "I-40 southwest to N.C. 55" in the first sentence.

§ 136-89.194. Laws applicable to the Authority; exceptions.

(a) Motor Vehicle Laws. — The Turnpike System shall be considered a "highway" as defined in G.S. 20-4.01(13) and a "public vehicular area" as defined in G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State Highway Patrol and the Division of Motor Vehicles, shall have the same powers and duties on the Turnpike System as on any other highway or public vehicular area.

(b) Applicable Contracting. — For the purposes of implementing this Article, the Authority shall solicit competitive proposals for the construction of Turnpike Projects in accordance with the provisions of Article 2 of this Chapter. Contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with construction of Turnpike Projects shall be solicited in accordance with procedures utilized by the Department of Transportation. Cost estimates prepared for the purpose of comparing bids for a Turnpike project are confidential and may not be disclosed until after the opening of bids for the project.

(c) Alternative Contracting Methods. — Notwithstanding the provisions of subsection (b) of this section, the Authority may authorize the use of alternative contracting methods if:

(1) The authorization applies to an individual project;

(2) The Authority has concluded, and documented in writing, that the alternative contracting method is necessary because the project cannot be completed utilizing the procedures of Article 2 of this Chapter within the necessary time frame or available funding or for other reasons the Authority deems in the public interest;

(3) The Authority has provided, to the extent possible, for the solicitation of competitive proposals prior to awarding a contract; and

(4) The approved alternative contracting method provides for reasonable compliance with the disadvantaged business participation goals of G.S. 136-28.4.

(d) Entry for Surveys. — The Turnpike Authority and its employees and contractors shall have the same right of entry for surveys, borings, soundings, or examinations as granted the Department of Transportation in G.S. 136-120.

(e) Plans and Contract Documents. — The requirements for registering right-of-way plans set in G.S. 136-19.4 apply to right-of-way plans of the Turnpike Authority. In applying G.S. 136-19.4 to the Authority, references to the "Department" are considered references to the "Turnpike Authority" and references to the "Board" are considered references to the "Authority Board."

Diaries and analyses for contracts of the Turnpike Authority are subject to the same restrictions on disclosure that apply to diaries and analyses for contracts of the Department under G.S. 136-28.5.

(f) Construction Claims. — G.S. 136-29 applies to the adjustment and resolution of Turnpike project construction claims. In applying G.S. 136-29 to the Turnpike Authority, references to the "Department of Transportation," the "State Highway Administrator," and a "State highway" are considered references to the "Turnpike Authority," the "chief engineer of the Turnpike Authority," and a "Turnpike project."

(g) Contract Exemptions. — The following provisions concerning the purchase of goods and services by a State agency do not apply to the Turnpike Authority:

(1) Article 3 of Chapter 143 of the General Statutes. The Authority may use the services of the Department of Administration in procuring goods and services that are not specific to establishing and operating a toll revenue system.

(2) Article 3D of Chapter 147 of the General Statutes. The Authority may use the services of the Office of Information Technology Services in procuring goods and services that are not specific to establishing and operating a toll revenue system. All contract information for contracts for information technology are subject to disclosure in accordance with G.S. 147-33.95.

(h) APA. — Chapter 150B of the General Statutes does not apply to the Turnpike Authority, except as provided in this section and G.S. 136-89.218. (2002-133, s. 1; 2006-228, s. 6; 2008-225, s. 6.)

Effect of Amendments. — Session Laws 2008-225, s. 6, effective August 17, 2008, in subsection (b), inserted "Applicable" at the beginning and added the last sentence; and added subsections (e) through (h).

§§ 136-89.199 through 136-89.209: Reserved for future codification purposes.

Part 2. Collection of Tolls on Turnpike Projects.

§ 136-89.210. Definitions.

The definitions in G.S. 136-89.181 and the following definitions apply in this Article:

(1) Reserved.
(2) Open road toll. — A toll payable under an open road tolling system.
(3) Open road tolling system. — A system of collecting a toll for the use of a highway that does not provide a way to pay the toll in cash while traveling on the highway. (2008-225, s. 2.)

Editor's Note. — Session Laws 2008-225, s. 12, made this Part effective August 17, 2008.

The word "Reserved" in subdivision (1) was underlined in Session Laws 2008-225, s. 2.

§ 136-89.211. Tolls for use of Turnpike project.

In exercising its authority under G.S. 136-89.183 to set tolls for the use of a Turnpike project, the Authority may not do any of the following:

(1) Set open road tolls that vary for the same class of motor vehicle depending on the method by which the Authority identifies a motor vehicle that drives on the Turnpike project. This does not preclude the Authority from allowing a discount of up to thirty-five percent (35%) of the amount of a toll for a motor vehicle equipped with an electronic toll collection transponder.
(2) Exempt a motor vehicle that is not a law enforcement vehicle, an emergency fire or rescue vehicle, or an emergency medical services vehicle from the requirement of paying a toll for the use of a Turnpike project. (2008-225, s. 2.)

§ 136-89.212. Payment of toll required for use of Turnpike project.

A motor vehicle that is driven on a Turnpike project is subject to a toll imposed by the Authority for the use of the project. If the toll is an open road toll, the person who is the registered owner of the motor vehicle is liable for payment of the toll unless the registered owner establishes that the motor vehicle was in the care, custody, and control of another person when it was driven on the Turnpike project.

A person establishes that a motor vehicle was in the care, custody, and control of another person when it was driven on a Turnpike project by submitting to the Authority a sworn affidavit stating one of the following:

(1) The name and address of the person who had the care, custody, and control of the motor vehicle when it was driven. If the motor vehicle was leased or rented under a long-term lease or rental, as defined in G.S. 105-187.1, the affidavit must be supported by a copy of the lease or rental agreement or other written evidence of the agreement.

(2) The motor vehicle was stolen. The affidavit must be supported by an insurance or police report concerning the theft or other written evidence of the theft.

(3) The person transferred the motor vehicle to another person by sale or otherwise before it was driven on the Turnpike project. The affidavit must be supported by insurance information, a copy of the certificate of title, or other evidence of the transfer. (2008-225, s. 2.)

§ 136-89.213. Administration of tolls and requirements for open road tolls.

(a) Administration. — The Authority is responsible for collecting tolls on Turnpike projects. In exercising its authority under G.S. 136-89.183 to perform or procure services required by the Authority, the Authority may contract with one or more providers to perform part or all of the collection functions and may enter into agreements to exchange information that identifies motor vehicles and their owners with one or more of the following entities: the Division of Motor Vehicles of the Department of Transportation, another state, another toll operator, or a toll collection-related organization. Identifying information obtained by the Authority through an agreement is not a public record and is subject to the disclosure limitations in 18 U.S.C. § 2721, the federal Driver's Privacy Protection Act.

(b) Open Road Tolls. — If a Turnpike project uses an open road tolling system, the Authority must operate a facility that is in the immediate vicinity of the Turnpike project and that accepts cash payment of the toll and must place signs on the Turnpike project that give drivers the following information:

(1) Notice that the driver is approaching a highway for which a toll is required. Signs providing this information must be placed before the toll is incurred.

(2) The methods by which the toll may be paid.

(3) Directions to the nearby facility that accepts cash payment of the toll. (2008-225, s. 2.)

§ 136-89.214. Bill for unpaid open road toll.

(a) Bill. — If a motor vehicle travels on a Turnpike project that uses an open road tolling system and a toll for traveling on the project is not paid within 15 days after the travel occurs, the Authority must send a bill by first-class mail to the registered owner of the motor vehicle for the amount of the unpaid toll. The Authority must send the bill within 90 days after the travel occurs. If a bill is not sent within the required time, the Authority waives collection of the toll. The Authority must establish a billing period for unpaid open road tolls that is no shorter than 15 days. A bill for a billing period must include all unpaid tolls incurred by the same person during the billing period.

(b) Information on Bill. — A bill sent under this section must include all of the following information:

(1) The name and address of the registered owner of the motor vehicle that traveled on the Turnpike project.

(2) The date the travel occurred, the approximate time the travel occurred, and each segment of the Turnpike project on which the travel occurred.

(3) An image of the registration plate of the motor vehicle, if the Authority captured an electronic image of the motor vehicle when it traveled on the Turnpike project.

(4) The amount of the toll due and an explanation of how payment may be made.

(5) The date by which the toll must be paid to avoid the imposition of a processing fee under G.S. 136-89.215 and the amount of the processing fee.

(6) A statement that a vehicle owner who has unpaid tolls is subject to a civil penalty and may not renew the vehicle's registration until the tolls and civil penalties are paid.

(7) A clear and concise explanation of how to contest liability for the toll. (2008-225, s. 2.)

§ 136-89.215. Required action upon receiving bill for open road toll and processing fee for unpaid toll.

(a) Action Required. — A person who receives a bill for an unpaid open road toll must take one of the following actions within 30 days after receiving the bill:

(1) Pay the bill.

(2) Send a written request to the Authority for a review of the toll.

(b) Fee. — If a person does not take one of the actions required under subsection (a) of this section within the required time, the Authority may add a processing fee to the amount the person owes. The processing fee may not exceed six dollars ($6.00). A person may not be charged more than forty-eight dollars ($48.00) in processing fees in a calendar year.

The Authority must set the processing fee at an amount that does not exceed the costs of identifying the owner of a motor vehicle that is subject to an unpaid toll and billing the owner for the unpaid toll. The fee is a receipt of the Authority and must be applied to these costs. (2008-225, s. 2.)

§ 136-89.216. Civil penalty for failure to pay open road toll.

(a) Penalty. — A person who receives one or more bills for unpaid open road tolls during the first or second six-month period in a year and who has not paid the amount due on those bills within 30 days after the end of the six-month period is subject to a civil penalty of twenty-five dollars ($25.00). The period from January 1 through June 30 of a year is the first six-month period in a year, and the period from July 1 through December 31 is the second six-month period in a year. Only one penalty may be assessed for a six-month period.

(b) Payment. — The Authority must send a notice by first-class mail to a person who is assessed a civil penalty under this section. A person who is assessed a civil penalty must pay the unpaid toll for which the civil penalty was imposed, the amount of any processing fee due, and the civil penalty within 30 days after receiving the notice.

(c) Penalty Proceeds. — A civil penalty imposed under this section is payable to the Authority or, if collected when a vehicle registration is renewed, to the Division of Motor Vehicles of the Department of Transportation. The clear proceeds of a civil penalty imposed under this section must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1. The guidelines used by the Office of State Budget and Management to determine an agency's actual costs of collecting a civil penalty and the clear proceeds of the civil penalty apply to the determination of the clear proceeds of a civil penalty imposed under this section. (2008-225, s. 2.)

§ 136-89.217. Vehicle registration renewal blocked for unpaid open road toll.

(a) Registration Block. — Failure of a person to pay an open road toll billed to the person under G.S. 136-89.214, any processing fee added under G.S. 136-89.215, and any civil penalty imposed under G.S. 136-89.216 is grounds under G.S. 20-54 to withhold the registration renewal of a motor vehicle registered in that person's name. The Authority must notify the Commissioner of Motor Vehicles of a person who owes a toll, a processing fee, or a civil penalty. When notified, the Commissioner of Motor Vehicles must withhold the registration renewal of any motor vehicle registered in that person's name.

(b) Collection by DMV. — A person whose motor vehicle registration renewal is blocked under this section may pay to the Division of Motor Vehicles of the Department of Transportation the amount owed for unpaid tolls, processing fees, and civil penalties due under this Part when renewing the vehicle registration. The Division must remit to the Authority the amount of tolls, fees, and civil penalties collected. The Division's costs of collecting tolls, fees, and civil penalties are considered a necessary expense of the operation of the Authority, and the Authority must reimburse the Division for these costs. (2008-225, s. 2.)

§ 136-89.218. Procedures for contesting liability for unpaid open road toll.

(a) Informal Review. — A person who receives a bill for an unpaid open road toll and who disputes liability for the toll may contest the toll by sending to the Authority a request for review of the toll. The person may include a sworn affidavit described in G.S. 136-89.212 that establishes that someone else had the care, custody, and control of the motor vehicle subject to the toll when the toll was incurred. The person must send the request for review to the Authority within 30 days after receiving the bill for the toll. A person who does not send a request for review to the Authority within this time limit waives the right to a review. If a person sends a timely request for review to the Authority, the Authority may not collect the disputed toll and any processing fee added to the bill for the toll until the conclusion of the review process in this section.

(b) Administrative Hearing. — If the Authority conducts an informal review under subsection (a) of this section and determines that the person who requested the review is liable for the toll, the Authority must send the person a notice informing the person of the Authority's determination. The person may contest this determination by filing a petition for a contested case hearing at the Office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes.

(c) Judicial Review. — Article 4 of Chapter 150B of the General Statutes governs judicial review of a final decision made in a contested case authorized under subsection (b) of this section. (2008-225, s. 2.)

Article 7.

Miscellaneous Provisions.

§ 136-93.1. Express permit review program.

(a) Program Created. — The Department shall develop a fee-supported express permit review program in each highway division. The program is voluntary for permit applicants and applies to permits, approvals, or certifications that allow for a connection to the State highway system through the use of a driveway, street, signal, drainage, or any other encroachment.

(b) Implementation. — An individual highway division may opt out of the express permit review program created under this section if the highway division routinely reviews and issues special commercial permits within an average of 45 days. Any express permit review program created under this section shall be supported by the fees established pursuant to subsection (e) of this section.

(c) Procedure. — In reviewing a permit application under the express permit review program, the Department shall undergo the following steps:

(1) The Department shall, within three business days of receipt, determine whether an express permit review application is complete. If the Department determines the express permit review application is not complete, the Department shall return the express permit review application and all fees to the permit applicant to allow for a complete express permit review application to be resubmitted to the Department.

(2) If the Department determines the express permit review application is complete, the Department shall, within 45 days, issue or deny the permit based upon its review of the application. Failure of the Department to issue or deny the permit within 45 days is a denial of the express permit review application.

(d) Staffing. — In order to implement the express permit review program, the Department may utilize either of the following or a combination thereof:

(1) Existing Department staff and resources.

(2) Contracted engineering firms supporting each highway division to provide express permit reviews, comments, and recommendations for issuing express permits. If the Department utilizes contracted engineering firms to provide work under this section, any fees received by the Department pursuant to subsection (e) of this section shall be credited towards the cost of the Department utilizing these contracted engineering firms. Any additional costs associated with engaging the contracted engineering firm shall be agreed to by the permit applicant prior to incurring the costs and shall be paid by the permit applicant.

(e) Fees. — The Department may determine the fees for an express application review under the express review program conducted by highway division staff. Unless a contracted engineering firm is utilized, the maximum permit application fee to be charged under this section for an express review of a project application requiring all of the permits listed under subsection (a) of this section shall not exceed four thousand dollars ($4,000). Notwithstanding Chapter 150B of the General Statutes, the Department shall establish the procedure by which the amount of the fees under this subsection are established and applied for an express review program permitted by this section. The fee schedule established by the Department shall be applicable to all divisions participating in an express permit review program.

(f) Use of Fees. — All fees collected under this section shall be used to fund the cost of administering and implementing express permit review programs created under this section. These costs include the salaries of the program's staff and costs of contracted engineering firms.

(g) Reports. — No later than March 1 of each year, the Department shall report to the Fiscal Research Division and the Joint Legislative Transportation Oversight Committee on the express permitting review program. The report shall include the cost of administering the program in each division, the number of express permits issued, the turnaround time for permits, the amount of fees collected per division, and the method that divisions use to implement the program. (2008-176, s. 1.)

Editor's Note. — Session Laws 2008-176, s. 3, made this section effective August 4, 2008.

§ 136-98. Counties authorized to participate in costs of road construction and maintenance, participation is voluntary.

(a) Repealed by Session Laws 2007-428, s. 4, effective August 23, 2007.

(b) Nothing in this Article prohibits counties from establishing service districts for road maintenance under Part 1, Article 16 of Chapter 153A of the General Statutes.

(c) A county is authorized to participate in the cost of rights-of-way, construction, reconstruction, improvement, or maintenance of a road on the State highway system under agreement with the Department of Transportation. County participation in improvements to the State highway system is voluntary. The Department shall not transfer any of its responsibilities to counties without specific statutory authority. (1931, c. 145, s. 35; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1995, c. 434, s. 2; 2007-428, s. 4; 2008-180, s. 7.)

Effect of Amendments. —

Session Laws 2008-180, s. 7, effective August 4, 2008, added "participation is voluntary" in the section heading; and added the last two sentences in subsection (c).

Article 10.

Preservation, etc., of Scenic Beauty of Areas along Highways.

§ 136-123. Restoration, preservation and enhancement of natural or scenic beauty.

(a) The Department of Transportation is hereby authorized and empowered to acquire by purchase, exchanges or gift, the fee-simple title or any lesser interest therein in real property in the vicinity of public highways forming a part of the State highway system, for the restoration, preservation and enhancement of natural or scenic beauty; provided that no lands, rights-of-way or facilities of a public utility as defined by G.S. 62-3(23), or of an electric membership corporation or telephone membership corporation, may be acquired, except that the Department of Transportation upon payment of the full cost thereof may require the relocation of electric distribution or telephone lines or poles; provided further, that such lands may be acquired by the Department of Transportation with the consent of the public utility or membership corporation.

(b) No landscaping or highway beautification project undertaken by the Department or any other unit of government may use oyster shells as a ground cover. The Department or any other unit of government that possesses oyster shells shall make them available to the Department of Environment and Natural Resources, Division of Marine Fisheries, without remuneration, for use in any oyster bed revitalization programs or any other program that may use the shells. (1967, c. 1247, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 2007-84, s. 1; 2008-198, s. 4.)

Effect of Amendments. —

Session Laws 2008-198, s. 4, effective August 8, 2008, substituted "possesses" for "comes into possession of" and inserted "without remuneration" in the second sentence of subsection (b).

ARTICLE 11.

Outdoor Advertising Control Act.

§ 136-126. Title of Article.

CASE NOTES

Effect on Local Regulation. — While the Outdoor Advertising Control Act and corresponding North Carolina DOT regulations did not preempt local regulation, nevertheless the DOT's outdoor advertising regulations expressly authorized the relocation of a billboard within certain limitations, and the Stanly County, N.C., Zoning Ordinance made such action unlawful; pursuant to G.S. 160A-174(b)(2), those regulations preempted the local zoning ordinance. Lamar OCI South Corp. v. Stanly County Zoning Bd. of Adjustment, 186 N.C. App. 44, 650 S.E.2d 37, 2007 N.C. App. LEXIS 1985 (2007).

§ 136-127. Declaration of policy.

CASE NOTES

Preemption of Local Ordinance. — While the Outdoor Advertising Control Act and corresponding North Carolina DOT regulations did not preempt local regulation, nevertheless the DOT's outdoor advertising regulations expressly authorized the relocation of a billboard within certain limitations, and the Stanly County, N.C., Zoning Ordinance made such action unlawful; pursuant to G.S. 160A-174(b)(2), those regulations preempted the local zoning ordinance. Lamar OCI South Corp. v. Stanly County Zoning Bd. of Adjustment, 186 N.C. App. 44, 650 S.E.2d 37, 2007 N.C. App. LEXIS 1985 (2007).

§ 136-129. Limitations of outdoor advertising devices.

CASE NOTES

Preemption of Local Ordinance. — While the Outdoor Advertising Control Act and corresponding North Carolina DOT regulations did not preempt local regulation, nevertheless the DOT's outdoor advertising regulations expressly authorized the relocation of a billboard within certain limitations, and the Stanly County, N.C., Zoning Ordinance made such action unlawful; pursuant to G.S. 160A-174(b)(2), those regulations preempted the local zoning ordinance. Lamar OCI South Corp. v. Stanly County Zoning Bd. of Adjustment, 186 N.C. App. 44, 650 S.E.2d 37, 2007 N.C. App. LEXIS 1985 (2007).

§ 136-131.1. (See Editor's note for expiration of section) Just compensation required for the removal of billboards on federal-aid primary highways by local authorities.

CASE NOTES

Applicability. — North Carolina DOT outdoor advertising regulations expressly authorized the relocation of a billboard within certain limitations, and the Stanly County, N.C., Zoning Ordinance made such action unlawful; pursuant to G.S. 160A-174(b)(2), those regulations preempted the local zoning ordinance, and the county's denial of a permit would in effect have caused the billboard to be removed, which was impermissible without the payment of just compensation. Lamar OCI South Corp. v. Stanly County Zoning Bd. of Adjustment, 186 N.C. App. 44, 650 S.E.2d 37, 2007 N.C. App. LEXIS 1985 (2007).

§ 136-133. Permits required.

CASE NOTES

Local Ordinance Preempted. — North Carolina DOT outdoor advertising regulations expressly authorized the relocation of a billboard within certain limitations, and the Stanly County, N.C., Zoning Ordinance made such action unlawful; pursuant to G.S. 160A-174(b)(2), those regulations preempted the local zoning ordinance, and at all times the advertising company had a valid DOT permit allowing the relocation of the billboard, which was valid until revoked for nonconformance. Lamar OCI South Corp. v. Stanly County Zoning Bd. of Adjustment, 186 N.C. App. 44, 650 S.E.2d 37, 2007 N.C. App. LEXIS 1985 (2007).

ARTICLE 14.

North Carolina Highway Trust Fund.

§ 136-176. Creation, revenue sources, and purpose of North Carolina Highway Trust Fund.

(a) A special account, designated the North Carolina Highway Trust Fund, is created within the State treasury. The Trust Fund consists of the following revenue:

(1) Motor fuel, alternative fuel, and road tax revenue deposited in the Fund under G.S. 105-449.125, 105-449.134, and 105-449.43, respectively.
(2) Motor vehicle use tax deposited in the Fund under G.S. 105-187.9.
(3) Revenue from the certificate of title fee and other fees payable under G.S. 20-85.
(4) Repealed by Session Laws 2001-424, s. 27.1.
(5) Interest and income earned by the Fund.

(a1) The Department shall use two hundred twenty million dollars ($220,000,000) in fiscal year 2001-2002, two hundred twelve million dollars ($212,000,000) in fiscal year 2002-2003, and two hundred fifty-five million dollars ($255,000,000) in fiscal year 2003-2004 of the cash balance of the Highway Trust Fund for the following purposes:

(1) For primary route pavement preservation. — One hundred seventy million dollars ($170,000,000) in fiscal year 2001-2002, and one hundred fifty million dollars ($150,000,000) in each of the fiscal years 2002-2003 and 2003-2004. Up to ten percent (10%) of the amount for each of the fiscal years 2001-2002, 2002-2003, and 2003-2004 is available in that fiscal year, at the discretion of the Secretary of Transportation, for:
    a. Highway improvement projects that further economic growth and development in small urban and rural areas, that are in the Transportation Improvement Program, and that are individually approved by the Board of Transportation; or
    b. Highway improvements that further economic development in the State and that are individually approved by the Board of Transportation.
(2) For preliminary engineering costs not included in the current year Transportation Improvement Program. — Fifteen million dollars ($15,000,000) in each of the fiscal years 2001-2002, 2002-2003, and 2003-2004. If any funds allocated by this subdivision, in the cash balance of the Highway Trust Fund, remain unspent on June 30, 2008, the Department may transfer within the Department up to twenty-nine million dollars ($29,000,000) of available funds to con-

tract for freight transportation system improvements for the Global TransPark.

(3) For computerized traffic signal systems and signal optimization projects. — Fifteen million dollars ($15,000,000) in each of the fiscal years 2001-2002, 2002-2003, and 2003-2004.

(4) For public transportation twenty million dollars ($20,000,000) in fiscal year 2001-2002, twenty-five million dollars ($25,000,000) in fiscal year 2002-2003, and seventy-five million dollars ($75,000,000) in fiscal year 2003-2004.

(5) For small urban construction projects. — Seven million dollars ($7,000,000) in fiscal year 2002-2003.

Funds authorized for use by the Department pursuant to this subsection shall remain available to the Department until expended.

(a2) Repealed by Session Laws 2002-126, s. 26.4(b), effective July 1, 2002.

(a3) The Department may obligate three hundred million dollars ($300,000,000) in fiscal year 2003-2004 and four hundred million dollars ($400,000,000) in fiscal year 2004-2005 of the cash balance of the Highway Trust Fund for the following purposes:

(1) Six hundred thirty million dollars ($630,000,000) for highway system preservation, modernization, and maintenance, including projects to enhance safety, reduce congestion, improve traffic flow, reduce accidents, upgrade pavement widths and shoulders, extend pavement life, improve pavement smoothness, and rehabilitate or replace deficient bridges; and for economic development transportation projects recommended by local officials and approved by the Board of Transportation.

(2) Seventy million dollars ($70,000,000) for regional public transit systems, rural and urban public transportation system facilities, regional transportation and air quality initiatives, rail system track improvements and equipment, and other ferry, bicycle, and pedestrian improvements. For any project or program listed in this subdivision for which the Department receives federal funds, use of funds pursuant to this subdivision shall be limited to matching those funds.

Funds authorized for obligation and use by the Department pursuant to this subsection shall remain available to the Department until expended.

(a4) Project selection pursuant to subsection (a3) of this section shall be based on identified and documented need. Funds expended pursuant to subdivision (1) of subsection (a3) of this section shall be distributed in accordance with the distribution formula in G.S. 136-17.2A. No funds shall be expended pursuant to subsection (a3)(1) of this section on any project that does not meet Department of Transportation standards for road design, materials, construction, and traffic flow.

(a5) The Department shall report to the Joint Legislative Transportation Oversight Committee, on or before September 1, 2003, on its intended use of funds pursuant to subsection (a3) of this section. The Department shall report to the Joint Transportation Appropriations Subcommittee, on or before May 1, 2004, on its actual current and intended future use of funds pursuant to subsection (a3) of this section. The Department shall certify to the Joint Legislative Transportation Oversight Committee each year, on or before November 1, that use of the Highway Trust Fund cash balances for the purposes listed in subsection (a3) of this section will not adversely affect the delivery schedule of any Highway Trust Fund projects. If the Department cannot certify that the full amounts authorized in subsection (a3) of this section are available, then the Department may determine the amount that can be used without adversely affecting the delivery schedule and may proportionately apply that amount to the purposes set forth in subsection (a3) of this section.

(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four and eight-tenths percent (4.8%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section may be used each fiscal year by the Department for expenses to administer the Trust Fund. Operation and project development costs of the North Carolina Turnpike Authority are eligible administrative expenses under this subsection. Any funds allocated to the Authority pursuant to this subsection shall be repaid by the Authority from its toll revenue as soon as possible, subject to any restrictions included in the agreements entered into by the Authority in connection with the issuance of the Authority's revenue bonds. Beginning one year after the Authority begins collecting tolls on a completed Turnpike Project, interest shall accrue on any unpaid balance owed to the Highway Trust Fund at a rate equal to the State Treasurer's average annual yield on its investment of Highway Trust Fund funds pursuant to G.S. 147-6.1. Interest earned on the unpaid balance shall be deposited in the Highway Trust Fund upon repayment. The sum up to the amount anticipated to be necessary to meet the State matching funds requirements to receive federal-aid highway trust funds for the next fiscal year may be set aside for that purpose. The rest of the funds in the Trust Fund shall be allocated and used as follows:

(1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct projects on segments or corridors of the Intrastate System as described in G.S. 136-178 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects.

(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops.

(3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.

(4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary road construction.

The Department must administer funds allocated under subdivisions (1), (2), and (4) of this subsection in a manner that ensures that sufficient funds are available to make the debt service payments on bonds issued under the State Highway Bond Act of 1996 as they become due.

(b1) The Secretary may authorize the transfer of funds allocated under subdivisions (1) through (4) of subsection (b) of this section to other projects that are ready to be let and were to be funded from allocations to those subdivisions. The Secretary shall ensure that any funds transferred pursuant to this subsection are repaid promptly and in any event in no more than four years. The Secretary shall certify, prior to making any transfer pursuant to this subsection, that the transfer will not affect the delivery schedule of Highway Trust Fund projects in the current Transportation Improvement Program. No transfers shall be allowed that do not conform to the applicable provisions of the equity formula for distribution of funds, G.S. 136-17.2A. If the Secretary authorizes a transfer pursuant to this subsection, the Secretary shall report that decision to the next regularly scheduled meetings of the Joint Legislative Commission on Governmental Operations, the Joint Legislative Transportation Oversight Committee, and to the Fiscal Research Division.

G.S. 136-176(b2) is set out three times. See note.

(b2) **(Effective until July 1, 2009)** There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of twenty-five million dollars ($25,000,000) to be used to service debt on bonds issued for the construction of the Triangle Expressway. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or related financing costs and expenses on revenue bonds or notes issued by the Authority to finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations set forth in this act at any time to decrease or eliminate the amount annually appropriated to the Authority.

(b2) **(Effective July 1, 2009, until July 1, 2010)** There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of sixty-four million dollars ($64,000,000). Of the amount allocated by this subsection, twenty-five million dollars ($25,000,000) shall be used to pay debt service or related financing costs and expenses on revenue bonds or notes issued for the construction of the Triangle Expressway, twenty-four million dollars ($24,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Monroe Connector/Bypass, and fifteen million dollars ($15,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Mid-Currituck Bridge. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or related financing costs and expenses on revenue bonds or notes issued by the Authority to finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations set forth in this act at any time to decrease or eliminate the amount annually appropriated to the Authority.

(b2) **(Effective July 1, 2010)** There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of ninety-nine million dollars ($99,000,000). Of the amount allocated by this subsection, twenty-five million dollars ($25,000,000) shall be used to pay debt service or related financing costs and expenses on revenue bonds or notes issued for the construction of the Triangle Expressway, twenty-four million dollars ($24,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Monroe Connector/Bypass, fifteen million dollars ($15,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Mid-Currituck Bridge, and thirty-five million dollars

G.S. 136-176(b2) is set out three times. See note.

($35,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Garden Parkway. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or related financing costs and expenses on revenue bonds or notes issued by the Authority to finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations set forth in this act at any time to decrease or eliminate the amount annually appropriated to the Authority.

(c) If funds are received under 23 U.S.C. Chapter 1, Federal-Aid Highways, for a project for which funds in the Trust Fund may be used, the amount of federal funds received plus the amount of any funds from the Highway Fund that were used to match the federal funds may be transferred by the Secretary of Transportation from the Trust Fund to the Highway Fund and used for projects in the Transportation Improvement Program.

(d) A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of G.S. 143C-6-11 only for the two bienniums following the year in which the contract is let. (1989, c. 692, s. 1.1; c. 770, ss. 68.2, 74.6; 1989 (Reg. Sess., 1990), c. 1024, s. 46(a), (b); 1991, c. 193, s. 9; c. 280, s. 1; c. 689, s. 62; 1995, c. 390, s. 27; 1995 (Reg. Sess., 1996), c. 590, s. 6; 1996, 2nd Ex. Sess., c. 18, s. 19.4(a); 1998-212, s. 27.2; 1999-237, s. 27.1; 2000-140, s. 31; 2001-424, ss. 27.1, 27.23(d), 27.23(e), 27.23(f); 2002-126, ss. 26.4(a), 26.4(b), 26.9(b); 2002-133, s. 3; 2002-159, s. 41.5; 2003-284, ss. 29.4, 29.22; 2003-383, ss. 1, 2, 3; 2004-124, ss. 30.3(a), (b), 30.21(b); 2006-203, s. 78; 2007-323, s. 27.17; 2008-107, ss. 25.1, 25.5(b), (d), (f), 25.15.)

Subsection (b2) Set Out Three Times. — The first version of subsection (b2) set out above is effective until July 1, 2009. The second version of subsection (b2) set out above is effective July 1, 2009, until July 1, 2010. The third version of subsection (b2) set out above is effective July 1, 2010.

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, ss. 25.1, 25.5(b), and 25.15, effective July 1, 2008, added the last sentence in subdivision (a1)(2); in subsection (b), in the second sentence, substituted "four and eight-tenths percent (4.8%)" for "four percent (4%)" and deleted "for the 2003-2004 fiscal year, three and eight-tenths percent (3.8%) through fiscal year 2006-2007, and four and two-tenths percent (4.2%) thereafter" following "of this section"; and added subsection (b2).

Session Laws 2008-107, s. 25.5(d), effective July 1, 2009, substituted the language beginning with "sixty-four million dollars ($64,000,000)..." and ending with "...for the construction of the Mid-Currituck Bridge" for "twenty-five million dollars ($25,000,000) to be used to service debt on bonds issued for the construction of the Triangle Expressway" near the beginning of subsection (b2).

Session Laws 2008-107, s. 25.5(f), effective July 1, 2010, in subsection (b2), substituted "ninety-nine million dollars ($99,000,000)" for "sixty-four million dollars ($64,000,000)" in the first sentence, added "and thirty-five million dollars ($35,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Garden Parkway" at the end of the second sentence, and made minor grammatical changes.

Chapter 138A.

State Government Ethics Act.

Article 1.

General Provisions.

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138A-3. Definitions.

Article 2.

State Ethics Commission.

138A-10. Powers and duties.
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Article 3.

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138A-21. Purpose.
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Article 4.

Ethical Standards for Covered Persons.

138A-32. Gifts.
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ARTICLE 1.

General Provisions.

§ 138A-3. Definitions.

The following definitions apply in this Chapter:

(1) Blind trust. — A trust established by or for the benefit of a covered person or a member of the covered person's immediate family for the purpose of divestiture of all control and knowledge of assets. A trust qualifies as a blind trust under this subdivision if the covered person or a member of the covered person's immediate family has no knowledge of the holdings and sources of income of the trust, the trustee of the trust is independent of and not associated with or employed by the covered person or a member of the covered person's immediate family and is not a member of the covered person's extended family, and the trustee has sole discretion as to the management of the trust assets.

(1c) Board. — Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, as determined and designated by the Commission, except for those public bodies that have only advisory authority.

(2) Business. — Any of the following organized for profit:
- a. Association.
- b. Business trust.
- c. Corporation.
- d. Enterprise.
- e. Joint venture.
- f. Organization.

  g. Partnership.
  h. Proprietorship.
  i. Vested trust.
  j. Every other business interest, including ownership or use of land for income.

(3) Business with which associated. — A business in which the covered person or filing person or any member of that covered person's or filing person's immediate family does any of the following:
  a. Is an employee.
  b. Holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of the interest owned.
  c. Owns a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more in the business or five percent (5%) of the business, whichever is less, other than as a trustee on a deed of trust.
  d. Is a lobbyist registered under Chapter 120C of the General Statutes.

  For purposes of this subdivision, the term "business" shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:
    1. The covered person, filing person, or a member of the covered person's or filing person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
    2. The fund is publicly traded, or the fund's assets are widely diversified.

(4) Commission. — The State Ethics Commission.

(5) Committee. — The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.

(6) Compensation. — Any money, thing of value, or economic benefit conferred on or received by any covered person or filing person in return for services rendered or to be rendered by that covered person or filing person or another. This term does not include campaign contributions properly received and, reported as required by Article 22A of Chapter 163 of the General Statutes.

(7) Confidential information. — Information defined as confidential by the law.

(8) Constitutional officers of the State. — Officers whose offices are established by Article III of the North Carolina Constitution.

(9) Contract. — Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.

(10) Covered person. — A legislator, public servant, or judicial officer, as identified by the Commission under G.S. 138A-11.

(11) Repealed by Session Laws 2008-213, s. 84(c), effective August 15, 2008.

(12) Employing entity. — For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For legislative employees, it is the authority

that hired the individual. For judicial employees, it is the Chief Justice.

(13) Extended family. — Spouse, lineal descendant, lineal ascendant, sibling, spouse's lineal descendant, spouse's lineal ascendant, spouse's sibling, and the spouse of any of these individuals.

(14) Filing person. — An individual required to file a statement of economic interest under G.S. 138A-22.

(14a), (14b) Reserved for future codification purposes.

(14c) Financial benefit. — A direct pecuniary gain or loss to the legislator, the public servant, or a person with which the legislator or public servant is associated, or a direct pecuniary loss to a business competitor of the legislator, the public servant, or a person with which the legislator or public servant is associated.

(15) Gift. — Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying.

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:

1. A sympathy card, letter, or note.
2. Flowers.
3. Food or beverages for immediate consumption.
4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars ($200.00) per death per donor.

(15a) through (15c) Reserved for future codification purposes.

(15d) Governmental unit. — A political subdivision of the State, and any other entity or organization created by a political subdivision of the State.

(16) Honorarium. — Payment for services for which fees are not legally or traditionally required.

(17) Immediate family. — An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household.

(18) Judicial employee. — The director and assistant director of the Administrative Office of the Courts and any other individual, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars ($60,000) or more.

(19) Judicial officer. — Justice or judge of the General Court of Justice, district attorney, clerk of court, or any individual elected or appointed to any of these positions prior to taking office.

(20) Legislative action. — As the term is defined in G.S. 120C-100.

(21) Legislative employee. — As the term is defined in G.S. 120C-100.

(22) Legislator. — A member or presiding officer of the General Assembly, or an individual elected or appointed a member or presiding officer of the General Assembly before taking office.

(23) Lobbying. — As the term is defined in G.S. 120C-100.

(24) Nonprofit corporation or organization with which associated. — Any not for profit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the covered person, filing person, or any member of the covered person's or filing person's immediate family is a director, officer, governing board member, employee, lobbyist registered under Chapter 120C of the General Statutes, or independent contractor. Nonprofit corporation or organization with which associated shall not include any board, entity, or other organization created by this State or by any political subdivision of this State.

(25) Official action. — Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(26) Participate. — To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(26c) Permanent designee. — An individual designated by a public servant to serve and vote in the absence of the public servant on a regular basis on a board on which the public servant serves.

(27) Person. — Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together. The term "person" does not include the State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State.

(27a), (27b) Reserved for future codification purposes.

(27c) Person with which the legislator is associated. — Any of the following:
- a. A member of the legislator's extended family.
- b. A client of the legislator.
- c. A business with which the legislator or a member of the legislator's immediate family is associated.
- d. A nonprofit corporation or association with which the legislator or a member of the legislator's immediate family is associated.
- e. The State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State that employs the legislator or a member of the legislator's immediate family.

(27d) Person with which the public servant is associated. — Any of the following:
- a. A member of the public servant's extended family.
- b. A client of the public servant.
- c. A business with which the public servant or a member of the public servant's immediate family is associated.
- d. A nonprofit corporation or association with which the public servant or a member of the public servant's immediate family is associated.

e. The State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State that employs the public servant or a member of the public servant's immediate family.

(28) Political party. — Either of the two largest political parties in the State based on statewide voter registration at the applicable time.

(29) Repealed by Session Laws 2008-213, s. 49, effective August 15, 2008.

(30) Public servants. — All of the following:

a. Constitutional officers of the State and individuals elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each individual designated under sub-subdivision a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to individuals designated under sub-subdivision a., c., or d. of this subdivision.

f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. Judicial employees.

i. All voting members of boards, including ex officio members, permanent designees of any voting member, and members serving by executive, legislative, or judicial branch appointment.

j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

k. For the Community College System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

l . Members of the Commission.

m. Individuals under contract with the State working in or against a position included under this subdivision.

(30a) through (30*l*) Reserved for future codification purposes.

(30k) State agency. — An agency in the executive branch of the government of this State, including the Governor's Office, a board, a department, a division, and any other unit of government in the executive branch.

(31) Vested trust. — A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family, except a blind trust. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified. (2006-201, s. 1; 2007-347, ss. 7, 8; 2007-348, ss. 19-26; 2008-187, s. 44; 2008-213, ss. 40-54, 84(c).)

Editor's Note. — Session Laws 2007-348, s. 44, as amended by Session Laws 2008-187, s. 32 and Session Laws 2008-213, s. 91, provides: "Sections 17, 23, 39, 40 and 41 of this act are effective January 1, 2007. Section 9 of this act is effective July 1, 2007. Sections 8, 11, 15, 20, 22, 25, and 42 of this act become effective October 1, 2007. Section 18 of this act becomes effective December 1, 2007. Section 34 of this act becomes effective January 1, 2008. The remainder of this act is effective when this act becomes law."

Effect of Amendments. —

Session Laws 2008-187, s. 44, effective August 7, 2008, substituted "lobbyist registered under" for "lobbyist registered as under" in the first sentence of subdivision (24).

Session Laws 2008-213, ss. 40 through 54 and 84(c), effective August 15, 2008, substituted "covered person or filing person" for "person," or a variation, in subdivisions (3), (6), and (24); substituted "individual" for "person," or a variation, in subdivisions (13), (14), (18), (19), (22), and (30); redesignated former subdivisions (3)d.a. and (3)d.b. as subdivisions (3)d.1. and (3)d.2., respectively; in subdivision (3), inserted "covered person or filing" in the introductory language; deleted subsection (11), which defined "Economic interest"; added subdivisions (14c), (15d), (27c), (27d) and (30k); and repealed subdivision (29), which defined "Public event."

Article 2.

State Ethics Commission.

§ 138A-6. State Ethics Commission established.

Editor's Note. —

Session Laws 2008-181, s. 15.1, provides: "The State Ethics Commission shall conduct a study of the implementation and effectiveness of Session Laws 2006-201, the State Government Ethics Act The study shall examine issues related to the administration of the laws created under this act by the State Ethics Commission, the Secretary of State, the State Board of Elections, and any applicable State agency. The study shall identify the areas of the ethics and lobbying process in which public input is needed the need for notice to the public of interpretations of the law the effectiveness of the ethics and lobbying education process, the volume of requests for advice, the adequacy of staffing to timely meet the needs of the act, and the general perception of the community affected by the State Government Ethics Act. The State Ethics Commission shall consult with the Legislative Ethics Committee as part of this study. The study shall assess and identify proposed legislative changes in the governmental process and the law needed to promote and continue high ethical behavior by governmental officers and employees. The report shall include recommendations on changes to Chapter 138A and Chapter 120C of the General Statutes. The State Ethics Commission shall report its findings and recommendations in writing to the Legislative Ethics Committee on or before by March 1, 2009."

§ 138A-10. Powers and duties.

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to covered persons in complying with this Chapter.

(2) Develop readily understandable forms, policies, and procedures to accomplish the purposes of the Chapter.

(3) Identify and publish the following:

a. A list of nonadvisory boards.

b. The names of individuals subject to this Chapter as covered persons and legislative employees under G.S. 138A-11.

(4) Receive and review all statements of economic interests filed with the Commission by prospective and actual covered persons and evaluate

whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(5) Conduct inquiries of alleged violations against judicial officers, legislators, and legislative employees in accordance with G.S. 138A-12.

(6) Conduct inquiries into alleged violations against public servants in accordance with G.S. 138A-12.

(7) Render advisory opinions in accordance with G.S. 138A-13 and G.S. 120C-102.

(8) Initiate and maintain oversight of ethics educational programs for public servants and their staffs, and legislators and legislative employees, consistent with G.S. 138A-14.

(9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(10) Adopt procedures and guidelines to implement this Chapter.

(11) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number of complaints referred under G.S. 138A-12(b), the number of complaints dismissed under G.S. 138A-12(c)(4), the number of complaints dismissed under G.S. 138A-12(f), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(h), the number of complaints referred for appropriate action under G.S. 138A-12(h) or G.S. 138A-12(k)(3), and the number of complaints pending action by the Commission.

(13) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

(b) The Commission may authorize the Executive Director and other staff of the Commission to evaluate statements of economic interest on behalf of the Commission as authorized under subdivision (a)(4) of this section.

(c) Except as otherwise provided in this Chapter, the Commission shall be the sole State agency with authority to determine compliance with or violations of this Chapter and to issue interpretations and advisory opinions under this Chapter. Decisions and advisory opinions by the Commission under this Chapter shall be binding on all other State agencies. (2006-201, s. 1; 2008-213, s. 55; 2008-215, s. 7.)

Editor's Note. — Session Laws 2008-181, s. 15.1, provides: "The State Ethics Commission shall conduct a study of the implementation and effectiveness of S.L. 2006-201, the State Government Ethics Act. The study shall examine issues related to the administration of the laws created under this act by the State Ethics Commission, the Secretary of State, the State Board of Elections, and any applicable State agency. The study shall identify the areas of the ethics and lobbying process in which public input is needed, the need for notice to the public of interpretations of the law, the effectiveness of the ethics and lobbying education process, the volume of requests for advice, the adequacy of staffing to timely meet the needs of the act, and the general perception of the community affected by the State Government Ethics Act. The State Ethics Commission shall consult with the Legislative Ethics Committee as part of this study. The study shall assess and identify proposed legislative changes in the governmental process and the law needed to promote and continue high ethical behavior by governmental officers and employees. The report shall include recommendations on changes to Chapter 138A and Chapter 120C of the General Statutes. The State Ethics Commission shall report its findings and recommendations in writing to the Legislative Ethics Committee on or before by March 1, 2009."

Session Laws 2008-215, which added subsection (c), in s. 9 provides: "This act is effective when it becomes law [August 15, 2008] and applies to all information received or collected by the State Auditor concerning alleged violations of Chapters 138A or 120C of the General Statutes or Article 14 of Chapter 120 of the General Statutes on or after January 1, 2007."

Effect of Amendments. — Session Laws 2008-213, s. 55, effective August 15, 2008, substituted "individuals" for "persons" in subdivision (a)(3)b.

Session Laws 2008-215, s. 7, effective August 15, 2008, added subsection (c). See Editor's note for applicability.

§ 138A-11. Identify and publish names of covered persons and legislative employees.

The Commission shall identify and publish at least quarterly a listing of the names and positions of all individuals subject to this Chapter as covered persons or legislative employees. The Commission shall also identify and publish at least annually a listing of all boards to which this Chapter applies. This listing may be published electronically on a public Internet Web site maintained by the Commission. (2006-201, s. 1; 2008-213, s. 56.)

Effect of Amendments. — Session Laws 2008-213, s. 56, effective August 15, 2008, substituted "individuals" for "persons" in the first sentence.

§ 138A-12. Inquiries by the Commission.

(a) Jurisdiction. — The Commission may receive complaints alleging unethical conduct by covered persons and legislative employees and shall conduct inquiries of complaints alleging unethical conduct by covered persons and legislative employees, as set forth in this section.

(a1) Notice of Allegation. — Upon receipt by the Commission of an written allegation of unethical conduct by a covered person or legislative employee, or the initiation by the Commission of an inquiry into unethical conduct under subsection (b) of this section, the Commission shall immediately notify the covered person or legislative employee subject to the allegation or inquiry in writing.

(b) Institution of Proceedings. — On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or those responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an inquiry into any of the following:

(1) The application or alleged violation of this Chapter.

(2) For legislators, the application of alleged violations of Part 1 of Article 14 of Chapter 120 of the General Statutes.

(3) An alleged violation of the criminal law by a covered person in the performance of that individual's official duties.

(4) An alleged violation of G.S. 126-14.

Upon receipt of a referral under G.S. 147-64.6B or a report under G.S. 147-64.6(c)(19), the Commission may conduct an inquiry under this section on its own motion. Allegations of violations of the Code of Judicial Conduct shall be referred to the Judicial Standards Commission without investigation.

(b1) Complaints on Its Own Motion. — An investigation initiated by the Commission on its own motion or upon written request of any public servant or those responsible for the hiring, appointing, or supervising of a public servant instituted under subsection (b) of this section shall be treated as a complaint for purposes of this section and need not be sworn or verified.

(c) Complaint. —

(1) A sworn complaint filed under this Chapter shall state the name, address, and telephone number of the individual filing the complaint,

the name and job title or appointive position of the covered person or legislative employee against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter or Chapter 120 of the General Statutes has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (d) of this section, a complaint filed under this Chapter must be filed within two years of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept, refer, or conduct an inquiry into any complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept, refer, or conduct an inquiry into a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The covered person or legislative employee and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint inquiry pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the covered person or legislative employee who is the subject of the complaint and the employing entity, within 30 days of the filing.

(d) Conduct of Inquiry of Complaints by the Commission. — The Commission shall conduct an inquiry into all complaints properly before the Commission in a timely manner. The Commission shall initiate an inquiry into a complaint within 60 days of the filing of the complaint. The Commission is authorized to initiate inquiries upon request of any member of the Commission if there is reason to believe that a covered person or legislative employee has or may have violated this Chapter. Commission-initiated complaint inquiries under this section shall be initiated within two years of the date the Commission knew of the conduct upon which the complaint is based, except when the conduct is material to the continuing conduct of the duties in office. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Commission may take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting inquiries.

(e) Covered Person and Legislative Employees Cooperation With Inquiry. — Covered persons and legislative employees shall promptly and fully cooperate with the Commission in any Commission-related inquiry. Failure to cooperate fully with the Commission in any inquiry shall be grounds for sanctions as set forth in G.S. 138A-45.

(f) Dismissal of Complaint After Preliminary Inquiry. — If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a covered person or legislative employee subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation within the jurisdiction of the Commission under subsection (b) of this section, the Commission shall dismiss the complaint.

(g) Commission Inquiries. — If at the end of its preliminary inquiry, the Commission determines to proceed with further inquiry into the conduct of a covered person or legislative employee, the Commission shall provide written notice to the individual who filed the complaint and the covered person or legislative employee as to the fact of the inquiry and the charges against the covered person or legislative employee. The covered person or legislative employee shall be given an opportunity to file a written response with the Commission.

(h) Action on Inquiries. — The Commission shall conduct inquiries into complaints to the extent necessary to either dismiss the complaint for lack of probable cause of a violation under this section, or:

(1) For public servants, decide to proceed with a hearing under subsection (i) of this section.
(2) For legislators, except the Lieutenant Governor, refer the complaint to the Committee.
(3) For judicial officers, refer the complaint to the Judicial Standards Commission for complaints against justices and judges, to the senior resident superior court judge of the district or county for complaints against district attorneys, or to the chief district court judge for the district or county for complaints against clerks of court.
(4) For legislative employees, refer the complaint to the employing entity.

(i) Hearing. —

(1) The Commission shall give full and fair consideration to all complaints received against a public servant. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant requests a hearing, a hearing shall be held.
(2) The Commission shall send a notice of the hearing to the complainant, and the public servant. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.
(3) The Commission shall make available to the public servant prior to a hearing all relevant information collected by the Commission in connection with its investigation of a complaint.
(4) At any hearing held by the Commission:
    a. Oral evidence shall be taken only on oath or affirmation.
    b. The hearing shall be open to the public, except for matters involving minors, personnel records, or matters that could otherwise be considered in closed session under G.S. 143-318.11. In any event, the deliberations by the Commission on a complaint may be held in closed session.
    c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Settlement of Inquiries. — The public servant who is the subject of the complaint and the staff of the Commission may meet by mutual consent before the hearing to discuss the possibility of settlement of the inquiry or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the inquiry is subject to the approval of the Commission.

(k) Disposition of Inquiries. — After hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a private admonishment to the public servant and notify the employing entity, if applicable. Such notification shall be treated as part of the personnel record of the public servant.

b. Refer the matter for appropriate action to the Governor and the employing entity that appointed or employed the public servant or of which the public servant is a member.

c. Refer the matter for appropriate action to the Chief Justice for judicial employees.

d. Refer the matter to the Principal Clerks of the House of Representatives and Senate of the General Assembly for constitutional officers of the State.

e. Refer the matter for appropriate action to the principal clerk of the house of the General Assembly that elected the public servant for members of the Board of Governors and the State Board of Community Colleges.

(*l*) Notice of Dismissal. — Upon the dismissal of a complaint under this section, the Commission shall provide written notice of the dismissal to the individual who filed the complaint and the covered person or legislative employee against whom the complaint was filed. The Commission shall forward copies of complaints and notices of dismissal of complaints against legislators to the Committee, against legislative employees to the employing entity for legislative employees, and against judicial officers to the Judicial Standards Commission for complaints against justices and judges, and the senior resident superior court judge of the district or county for complaints against district attorneys, or the chief district court judge of the district or county for complaints against clerks of court.

(m) Reports and Records. — The Commission shall render the results of its inquiry in writing. When a matter is referred under subdivision (h)(2) and (3), or subsection (k) of this section, the Commission's report shall consist of the complaint, response, and detailed results of its inquiry in support of the Commission's finding of a violation under this Chapter.

(n) Confidentiality. — Complaints and responses filed with the Commission and reports and other investigative documents and records of the Commission connected to an inquiry under this section, including information provided pursuant to G.S. 147-64.6B or G.S. 147-64.6(c)(19), shall be confidential and not matters of public record, except as otherwise provided in this section or when the covered person or legislative employee under inquiry requests in writing that the complaint, response, and findings be made public. Once a hearing under this section commences, the complaint, response, and all other documents offered at the hearing in conjunction with the complaint, not otherwise privileged or confidential under law, shall be public records. If no hearing is held at such time as the Commission reports to the employing entity a recommendation of sanctions, the complaint and response shall be made public.

(o) Recommendations of Sanctions. — After referring a matter under subsection (k) of this section, if requested by the entity to which the matter was referred, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In recommending appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for a public servant as set forth in Article 4 of this Chapter, including those dealing with conflicts of interest.
(2) The number of ethics violations.
(3) The severity of the ethics violations.
(4) Whether the ethics violations involve the public servant's financial interest.
(5) Whether the ethics violations were inadvertent or intentional.
(6) Whether the public servant knew or should have known that the improper conduct was a violation of this Chapter.
(7) Whether the public servant has previously been advised or warned by the Commission.
(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-24(e).
(9) The public servant's motivation or reason for the improper conduct or action, including whether the action was for personal financial gain versus protection of the public interest.

In making recommendations under this subsection, if the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant, including removal of the public servant from the public servant's State position. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over covered persons, or other State employees or appointees.

(p) Authority of Employing Entity. — Any action or failure to act by the Commission under this Chapter, except G.S. 138A-13, shall not limit any authority of any of the applicable employing entities to discipline the covered person or legislative employee.

(q) Continuing Jurisdiction. — The Commission shall have continuing jurisdiction to investigate possible criminal violations of this Chapter for a period of one year following the date an individual, who was formerly a public servant or legislative employee, ceases to be a public servant or legislative employee for any investigation that commenced prior to the date the public servant or legislative employee ceases to be a public servant or legislative employee.

(r) Subpoena Authority. — The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person or governmental unit covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(s) Reports. — The number of complaints referred under this section shall be reported under G.S. 138A-10(a)(12).

(t) Concurrent Jurisdiction. — Nothing in this section shall limit the jurisdiction of the Committee or the Judicial Standards Commission with regards to legislative or judicial misconduct, and jurisdiction under this section shall be concurrent with the jurisdiction of the Committee and the Judicial Standards Commission. (2006-201, s. 1; 2007-348, ss. 27-30; 2008-187, s. 21; 2008-213, ss. 1(b), 57; 2008-215, ss. 4, 5.)

Editor's Note. — The bracketed word "[of]" was added in subsection (f) at the direction of the Revisor of Statutes. The error that precipitated the addition was corrected by Session Laws 2008-187, s. 21, and Session Laws 2008-213, s. 57.

Session Laws 2008-215, s. 9, provides: "This act is effective when it becomes law [August 15, 2008] and applies to all information received or collected by the State Auditor concerning alleged violations of Chapters 138A or 120C of the General Statutes or Article 14 of Chapter 120 of the General Statutes on or after January 1, 2007."

Effect of Amendments. —

Session Laws 2008-187, s. 21, effective August 7, 2008, substituted "subsection (b) of this section" for "subsection (b) if this section" in subsection (f).

Session Laws 2008-213, ss. 1(b) and 57, effective August 15, 2008, added subsection (a1); in subsection (b), substituted "those responsible" for "any person responsible"; added subsection (b1); in subdivision (c)(1), substituted "individual" for "person" and "covered person or legislative employee" for "person"; in subdivision (c)(4)b, substituted "covered person or legislative employee" for "individuals"; in subsection (f), substituted "of" for "if" near the end; in subsection *(l)* , substituted "covered person or legislative employee" for "person"; in subsection (q), substituted "an individual" for "a person"; and in subsection (r), inserted "or governmental unit" near the end.

Session Laws 2008-215, ss. 4 and 5, effective August 15, 2008, added the first sentence in the concluding paragraph of subsection (b); and inserted "including information provided pursuant to G.S. 147-64.6B or G.S. 147-64.6(c)(19)" in the first sentence of subsection (n). See Editor's note for applicability.

§ 138A-13. Request for advice.

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a public servant or legislative employee, legal counsel for any public servant or legislative employee, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advice on specific questions involving the meaning and application of this Chapter and the public servant's or legislative employee's compliance therewith. Requests for advice and advice rendered in response to those requests shall relate prospectively to real or reasonably anticipated fact settings or circumstances.

(a1) On its own motion, the Commission may render advisory opinions on specific questions involving the meaning and application of this Chapter.

(a2) A request for a formal advisory opinion under subsection (a) of this section shall be in writing, electronic or otherwise. The Commission shall issue formal advisory opinions having prospective application only. A public servant or legislative employee who relies upon the advice provided to that public servant or legislative employee on a specific matter addressed by the requested formal advisory opinion shall be immune from all of the following:

(1) Investigation by the Commission, except for an inquiry under G.S. 138A-12(b)(3).

(2) Any adverse action by the employing entity.

(3) Investigation by the Secretary of State.

(b) At the request of a legislator, the Commission shall render advice on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. Requests for advice and advice rendered in response to those requests shall relate prospectively to real or reasonably anticipated fact settings or circumstances.

(b1) A request by a legislator for a recommended formal advisory opinion shall be in writing, electronic or otherwise. The Commission shall issue recommended formal advisory opinions having prospective application only.

Until action is taken by the Committee under G.S. 120-104, a legislator who relies upon the advice provided to that legislator on a specific matter addressed by the requested recommended formal advisory opinion shall be immune from all of the following:

(1) Investigation by the Committee or Commission, except for an inquiry under G.S. 138A-12(b)(3).
(2) Any adverse action by the house of which the legislator is a member.
(3) Investigation by the Secretary of State.

Any recommended formal advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee, together with a copy of the request. Except for the Lieutenant Governor, the immunity granted under this subsection shall not apply after the time the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(b2) At the request of the Auditor, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter, Article 14 of Chapter 120 of the General Statutes, and Chapter 120C of the General Statutes and an affected person's compliance therewith. The request shall be in writing, electronic or otherwise, and relate to real fact settings and circumstances. Except when the question involves a question governed by subsection (b) or (b1) of this section, the Commission shall issue an advisory opinion under this subsection within 60 days of the receipt of all information deemed necessary by the Commission to render an opinion. If the question involves a question governed by subsection (b) or (b1) of this section, the Commission shall comply with the provisions of that section prior to responding to the Auditor by delivering the recommended advisory opinion to the Committee within 60 days of the receipt of all information deemed necessary by the Commission to render an opinion. The Committee shall act on the opinion within 30 days of receipt and the Commission shall deliver the opinion to the Auditor. If the Committee fails to act on a recommended advisory opinion under this subsection with 30 days of receipt, the Commission shall deliver its recommended advisory opinion to the Auditor. Notwithstanding G.S. 138A-13(e), the Auditor may only release those portions of the advisory opinion necessary to comply with the requirements of G.S. 147-64.6(c)(1).

(c) Staff to the Commission may issue advice, but not formal or recommended formal advisory opinions, under procedures adopted by the Commission.

(d) The Commission shall publish its formal advisory opinions within 30 days of issuance. These formal advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting formal advisory opinions. When the Commission issues a recommended formal advisory opinion to a legislator under subsection (b1) of this section, the Commission shall publish only the edited formal advisory opinion of the Committee within 30 days of receipt of the edited opinion from the Committee.

(e) Except as provided under subsections (b2), (d) and (e1) of this section, a request for advice, any advice provided by Commission staff, any formal or recommended formal advisory opinions, any supporting documents submitted or caused to be submitted to the Commission or Commission staff, and any documents prepared or collected by the Commission or Commission staff in connection with a request for advice are confidential. The identity of the individual making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual who requests advice or receives advice, including a formal or recommended formal advisory opinion, may authorize the release to any other person, the State, or any governmental unit of the request, the advice, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1.
for and advisory opinions issued under

(e1) Staff to the Commission may share all information and documents related to requests for advice, made by legislators under this section with staff to the Committee. The information and documents in the possession of staff to the Committee are confidential and are not public records.

(f) This section shall apply to judicial officers only for the purpose of advice related to Article 3 of this Chapter.

(g) Requests for advice may be withdrawn by the requestor at any time prior to the issuance of the advice. (2006-201, s. 1; 2007-348, s. 31; 2008-213, ss. 2(b), 91.5; 2008-215, s. 6.)

Editor's Note. — This section was amended by Session Laws 2008-213, s. 2(b), in the coded bill drafting format provided by G.S. 120-20.1. The act rewrote subsection (e), but the words "for" and "and advisory opinions issued under" were not set out as struck through in the act. Subsection (e) has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2008-215, s. 9, provides: "This act is effective when it becomes law [August 15, 2008] and applies to all information received or collected by the State Auditor concerning alleged violations of Chapters 138A or 120C of the General Statutes or Article 14 of Chapter 120 of the General Statutes on or after January 1, 2007."

Session Laws 2008-213, s. 91.5, was contingent on Section 6 of Senate Bill 1875, 2007 Regular Session (Session Laws 2008-215, s. 6) becoming law, which it did.

Effect of Amendments. —

Session Laws 2008-213, s. 2(b), effective January 1, 2007, and applicable to requests made on and after that date, rewrote the section.

Session Laws 2008-213, s. 91.5, effective August 15, 2008, redesignated subsection (b1) as added by Session Laws 2008-215, s. 6, as subsection (b2), and in subsection (b2), inserted "or (b1)" twice and added the last sentence.

Session Laws 2008-215, s. 6, effective August 15, 2008, added subsection (b1). See Editor's note for applicability.

§ 138A-14. Ethics education program.

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons and their immediate staffs, and legislative employees, a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or employment, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant shall participate in an ethics presentation approved by the Commission within six months of the public servant's election, reelection, appointment, or employment, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission and the Committee deem appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Commission and Committee within three months of the legislator or legislative employee's election, reelection, appointment, or employment, and every legislative employee shall attend refresher ethics education presentations at least every two years thereafter, in a manner as the Commission and Committee deem appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(e) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(f) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons and legislative employees. Publication under this subsection may be done electronically.

(g) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to covered persons. This collection shall be made available electronically as resource material to public servants, and ethics liaisons, upon request.

(h) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

(i) This section shall not apply to judicial officers. (2006-201, s. 1; 2007-347, s. 9(a); 2008-213, ss. 59, 60.)

Effect of Amendments. —

Session Laws 2008-213, ss. 59 and 60, effective August 15, 2008, in subsection (b), substituted "public servant's" for "person's" in the last sentence; and in subsection (c), substituted "legislator or legislative employee's" for "person's" in the last sentence.

§ 138A-15. Duties of heads of State agencies.

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants in that individual's agency or on that individual's board, or under that individual's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(e) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that individual's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(e) At the beginning of any meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Covered Persons set forth in Article 4 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-14 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants in connection with their designation, hiring, promotion, appointment, or election. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff. (2006-201, s. 1; 2007-347, s. 9(b); 2008-213, ss. 61, 62.)

Effect of Amendments. — Session Laws 2008-213, ss. 61 and 62, effective August 15, 2008, in subsections (b) and (d), substituted "individual's" for "person's" four times.

ARTICLE 3.

Public Disclosure of Economic Interests.

§ 138A-21. Purpose.

The purpose of disclosure of the financial and personal interests by covered persons is to assist covered persons and those who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the covered person's private interests and the covered person's public duties. It is critical to this process that current and prospective covered persons examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the covered person's private interests and the covered person's public duties. Covered persons must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the covered person's public position or duties might impact the covered person's private interests. Covered persons have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the covered person's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information. (2006-201, s. 1; 2008-213, s. 63.)

Effect of Amendments. — Session Laws 2008-213, s. 63, effective August 15, 2008, deleted "persons" preceding "who appoint, elect" in the first sentence.

§ 138A-22. Statement of economic interest; filing required.

(a) Every covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants included under G.S. 138A-3(30)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars ($60,000), shall file a statement of economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than April 15 of every year thereafter, except as otherwise filed under subsections (c1) and (d) of this section. A prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the covered person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection.

(b) Notwithstanding subsection (a) of this section, individuals hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days after their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Notwithstanding subsection (a) of this section, public servants, under G.S. 138A-3(30)j. and k., who have submitted a statement of economic interest under subsection (a) of this section, may be hired, appointed, or elected provisionally prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article, subject to dismissal or removal based on the Commission's evaluation.

(c1) A public servant reappointed to a board between January 1 and April 15 shall file a current statement of economic interest prior to the reappointment.

(d) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106 or G.S. 163-323 within 10 days of the filing deadline for the office the candidate seeks. An individual who is nominated under G.S. 163-114 after the primary and before the general election, and an individual who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. An individual nominated under G.S. 163-114 shall file the statement within three days following the individual's nomination, or not later than the day preceding the general election, whichever occurs first. An individual seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. An individual seeking to have write-in votes counted for that individual in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(e) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(f) Within 10 days of the filing deadline for office of a covered person, the executive director of the State Board of Elections shall send to the State Ethics Commission a list of the names and addresses of each candidate who have filed as a candidate for office as a covered person. A county board of election shall forward any statements of economic interest filed with the board under this section to the State Board of Elections. The executive director of the State Board of Elections shall forward a certified copy of the statements of economic interest to the Commission for evaluation upon its filing with the State Board of Elections under this section.

(g) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section and in G.S. 138A-15(h), upon notification by the employing entity, the Commission shall furnish to all other covered persons the appropriate forms needed to comply with this Article. (2006-201, s. 1; 2007-29, s. 2; 2007-348, ss. 32, 33; 2008-213, s. 64.)

Effect of Amendments. —

Session Laws 2008-213, s. 64, effective August 15, 2008, in subsection (a), inserted "covered" in the third sentence; in subsection (b), substituted "individuals" for "persons"; and in subsection (d), substituted "an individual" for "a person," "individual's" for "person's," and "that individual" for "the person" throughout.

§ 138A-23. Statements of economic interest as public records.

(a) The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records.

(b) The statements of economic interest filed by prospective public servants, and the written evaluations by the Commission of those statements, for individuals elected by the General Assembly shall be provided to the chair of the standing committee handling the legislation regarding the election and made available to all members of the General Assembly. The statements of economic interest filed by public servants elected to positions by the General

Assembly, and written evaluations by the Commission of those statements, are not public records until the prospective public servant is sworn into office.

(c) The statements of economic interest filed by prospective public servants, and the written evaluations by the Commission of those statements, for individuals confirmed for appointment as a public servant by the General Assembly shall be provided to the chair of the standing committee handling the legislation regarding the appointment. The statements of economic interest filed by prospective public servants for confirmation for appointment by the General Assembly, and written evaluations by the Commission of those statements, are public records at the time of the announcement of the appointment. (2006-201, s. 1; 2007-347, s. 10; 2008-213, ss. 65, 66.)

Effect of Amendments. —

Session Laws 2008-213, ss. 65 and 66, effective August 15, 2008, substituted "individuals" for "persons" in the first sentences of subsections (b) and (c).

§ 138A-24. Contents of statement.

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be provided to all questions. The form shall include the following information about the filing person and the filing person's immediate family:

(1) Except as otherwise provided in this subdivision, the name, current mailing address, occupation, employer, and business of the filing person. Any individual holding or seeking elected office for which residence is a qualification for office shall include a home address. A judicial officer may use a current mailing address instead of the home address on the form required in this subsection. The judicial officer may also use the initials instead of the name of any unemancipated child of the judicial officer who also resides in the household of the judicial officer. If the judicial officer provides the initials of an unemancipated child, the judicial officer shall concurrently provide the name of the unemancipated child to the Commission. The name of an unemancipated child provided by the judicial officer to the Commission shall not be a public record under Chapter 132 of the General Statutes and is privileged and confidential.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned by the filing person and the filing person's immediate family, except assets or liabilities held in a blind trust. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's immediate family, including descriptions adequate to determine the location by city and county of each parcel.

b. Real estate that is currently leased or rented to or from the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to or from the State.

e. The name of each publicly owned company. For purposes of this sub-subdivision, the term "publicly owned company" shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

1. The filing person or a member of the filing person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

    2. The fund is publicly traded, or the fund's assets are widely diversified.
  f. The name of each nonpublicly owned company or business entity, including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.
  g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list of any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).
  h. A list of all nonpublicly owned businesses of which the filing person and the filing person's immediate family is an officer, employee, director, partner, owner, or member or manager of a limited liability company.
  i. For any company or business entity listed under sub-subdivisions f., g., and h. of this subdivision, if known, any company or business entity that has any material business dealings, contracts, or other involvement with the State, or is regulated by the State, including a brief description of the business activity.
  j. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, excluding a blind trust, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.
  k. A list of all liabilities, excluding indebtedness on the filing person's primary personal residence, by type of creditor and debtor.
  l. Repealed by Session Laws 2007-348, s. 34. See Editor's note for effective date.
  m. A list of all stock options in a company or business not otherwise disclosed on this statement.

(3) The name of each source (not specific amounts) of income of more than five thousand dollars ($5,000) received during the previous year by business or industry type, if that source is not listed under subdivision (2) of this subsection. Income shall include salary, wages, professional fees, honoraria, interest, dividends, rental income, and business income from any source other than capital gains, federal government retirement, military retirement, or social security income.

(4) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during the past year in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:
  a. Administrative law.
  b. Admiralty law.
  c. Corporate law.
  d. Criminal law.
  e. Decedents' estates law.
  f. Environmental law.
  g. Insurance law.
  h. Labor law.
  i. Local government law.
  j. Negligence or other tort litigation law.
  k. Real property law.
  l. Securities law.
  m. Taxation law.

n. Utilities regulation law.

(5) Except for a filing person in compliance under subdivision (4) of this subsection, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of categories of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars ($10,000).

(6) An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This subdivision does not apply to a legislator, a judicial officer, or that legislator's or judicial officer's immediate family.

(7) A list of societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction, in which the public servant or a member of the public servant's immediate family is a director, officer, or governing board member. This subdivision does not apply to a legislator, a judicial officer, or that legislator's or judicial officer's immediate family.

(8) A list of all things with a total value of over two hundred dollars ($200.00) per calendar quarter given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for the purpose of lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, excluding things given by a member of the filing person's extended family. The list shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the filing person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person.

(9) A list of any felony convictions of the filing person, excluding any felony convictions for which a pardon of innocence or order of expungement has been granted.

(10) Any other information that the filing person believes may assist the Commission in advising the filing person with regards to compliance with this Chapter.

(11) A list of any nonprofit corporation or organization with which associated during the preceding calendar year, including a list of which of those nonprofit corporations or organizations with which associated do business with the State or receive State funds and a brief description of the nature of the business, if known or with which due diligence could reasonably be known.

(12) A statement of whether the filing person or the filing person's immediate family is or has been a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes within the preceding 12 months.

(b) The Supreme Court, the Committee, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, other boards, and the appointing authority or employing entity may require a filing person to file supplemental information in conjunction with the filing of that filing person's statement of economic interest. These supplemental filings requirements shall be filed with the Commission and included on the forms to be filed with the Commission. The Commission shall evaluate the supplemental forms as part of the statement of economic interest. The failure to file supplemental forms shall be subject to the provisions of G.S. 138A-25.

(c) Each statement of economic interest shall contain sworn certification by the filing person that the filing person has read the statement and that, to the best of the filing person's knowledge and belief, the statement is true, correct, and complete. The filing person's sworn certification also shall provide that the filing person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(d) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.

(e) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. This subsection does not apply to statements of economic interest of legislators and judicial officers. The Commission shall submit the evaluation to all of the following:

(1) The filing person who submitted the statement.
(2) The head of the agency in which the filing person serves.
(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.
(4) Repealed by Session Laws 2008-213, s. 74, effective August 15, 2008.
(5) The appointing or hiring authority for those public servants not under the Governor's authority.
(6) The State Board of Elections for those filing persons who are elected.
(7) Repealed by Session Laws 2008-213, s. 74, effective August 15, 2008.

(f) The Commission shall prepare a written evaluation of each statement of economic interest for nominees of the Board of Governors of The University of North Carolina elected pursuant to G.S. 116-6, and nominees of the State Board of Community Colleges elected pursuant to G.S. 115D-2 within seven days of the submission of the completed statement of economic interest to the Commission. (2006-201, s. 1; 2007-29, s. 1; 2007-348, s. 34; 2008-187, s. 32; 2008-213, ss. 67-72(a), 73, 74, 74.5, 91.)

Editor's Note. — Session Laws 2007-348, s. 44, as amended by Session Laws 2008-187, s. 32, and Session Laws 2008-213, s. 91, made the amendment by Session Laws 2007-348, s. 34, effective January 1, 2008.

Effect of Amendments. —

Session Laws 2008-213, ss. 67 through 71 and 73 through 74.5, effective August 15, 2008, in subdivision (a)(1), inserted "filing" near the end of the first sentence, and substituted "individual" for "person" in the second sentence; in subdivision (a)(2)h, substituted "filing person and the filing person's immediate family" for "person"; in subdivision (a)(6), substituted "legislator, a judicial officer, or that legislator's or judicial officer's immediate family" for "legislator or a judicial officer"; in subdivision (a)(7), substituted "legislator's or judicial officer's" for "person's"; in subdivision (a)(8), inserted "filing" near the end of the first sentence; in subsection (b), inserted "filing" in the first sentence; in subsection (e), added the second sentence; deleted subdivisions (e)(4) and (e)(7), relating to the Chief Justice and the Committee; and added subsection (f).

Session Laws 2008-213, s. 72(a), effective January 1, 2007, and applicable to statements of economic interest filed on or after that date, rewrote subdivision (a)(10).

§ 138A-25. Failure to file.

(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify filing persons who have failed to file or filing persons whose statement has been deemed incomplete. For a filing person currently serving as a covered person, the Commission shall notify the filing person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section.

(b) Any filing person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any filing person to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45. (2006-201, s. 1; 2008-213, s. 75.)

Effect of Amendments. — Session Laws 2008-213, s. 75, effective August 15, 2008, inserted "filing" four times in subsection (a).

ARTICLE 4.

Ethical Standards for Covered Persons.

§ 138A-32. Gifts.

(a) A covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity.

(b) A covered person may not solicit for a charitable purpose any thing of monetary value from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) No public servant, legislator, or legislative employee shall knowingly accept a gift from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes. No legislator or legislative employee shall knowingly accept a gift from liaison personnel designated under Chapter 120C of the General Statutes. No public servant, legislator, or legislative employee shall accept a gift knowing all of the following:

(1) The gift was obtained indirectly from a lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes.

(2) The lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes intended for the ultimate recipient of the gift to be a public servant, legislator, or legislative employee as provided in G.S. 120C-303.

(d) No public servant shall knowingly accept a gift from a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(d1) No public servant shall accept a gift knowing all of the following:

(1) The gift was obtained indirectly from a person described under subdivisions (d)(1), (2), and (3) of this section.

(2) The person described under subdivisions (d)(1), (2), and (3) of this section intended for the ultimate recipient of the gift to be a public servant.

(e) Subsections (c), (d), and (d1) of this section shall not apply to any of the following:

(1) Food and beverages for immediate consumption in connection with any of the following:

a. An open meeting of a public body, provided that the open meeting is properly noticed under Article 33C of Chapter 143 of the General Statutes.

b. A gathering of an organization with at least 10 or more individuals in attendance open to the general public, provided that a sign or other communication containing a message that is reasonably designed to convey to the general public that the gathering is open to the general public is displayed at the gathering.

c. A gathering of a person or governmental unit to which the entire board of which a public servant is a member, at least 10 public servants, all the members of the House of Representatives, all the members of the Senate, all the members of a county or municipal legislative delegation, all the members of a recognized legislative caucus with regular meetings other than meetings with one or more lobbyists, all the members of a committee, a standing subcommittee, a joint committee or joint commission of the House of Representatives, the Senate, or the General Assembly, or all legislative employees are invited, and one of the following applies:

1. At least 10 individuals associated with the person or governmental unit actually attend, other than the covered person or legislative employee, or the immediate family of the covered person or legislative employee.

2. All shareholders, employees, board members, officers, members, or subscribers of the person or governmental unit located in North Carolina are notified and invited to attend.

For purposes of this sub-subdivision only, the term "invited" shall mean written notice from at least one host or sponsor of the gathering containing the date, time, and location of the gathering given at least 24 hours in advance of the gathering to the specific qualifying group listed in this sub-subdivision. If it is known at the time of the written notice that at least one sponsor is a lobbyist or lobbyist principal, the written notice shall also state whether or not the gathering is permitted under this section.

(2) Informational materials relevant to the duties of the covered person or legislative employee.

(3) Reasonable actual expenditures of the legislator, public servant, or legislative employee for food, beverages, registration, travel, lodging, other incidental items of nominal value, and entertainment, in connection with (i) a legislator's, public servant's, or legislative employee's attendance at an educational meeting for purposes primarily related to the public duties and responsibilities of the legislator, public servant, or legislative employee; (ii) a legislator's, public servant's, or legislative employee's participation as a speaker or

member of a panel at a meeting; (iii) a legislator's or legislative employee's attendance and participation in meetings of a nonpartisan state, regional, national, or international legislative organization of which the General Assembly is a member or that the legislator or legislative employee is a member or participant of by virtue of that legislator's or legislative employee's public position, or as a member of a board, agency, or committee of such organization; or (iv) a public servant's attendance and participation in meetings as a member of a board, agency, or committee of a nonpartisan state, regional, national, or international organization of which the public servant's agency is a member or the public servant is a member by virtue of that public servant's public position, provided the following conditions are met:

a. The reasonable actual expenditures shall be made by a lobbyist principal, and not a lobbyist.
b. Any meeting must be attended by at least 10 or more participants, have a formal agenda, and notice of the meeting has been given at least 10 days in advance.
c. Any food, beverages, transportation, or entertainment must be provided to all attendees or defined groups of 10 or more attendees as part of the meeting or in conjunction with the meeting.
d. Any entertainment must be incidental to the principal agenda of the meeting.
e. If the legislator, public servant, or legislative employee is participating as a speaker or member of a panel, then that legislator, public servant, or legislative employee must be a bona fide speaker or participant.

(4) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(5) Gifts accepted on behalf of the State for use by the State or for the benefit of the State.

(6) Anything generally made available or distributed to the general public or all other State employees by lobbyists or lobbyist principals, or persons described in subdivisions (d)(1), (2), or (3) of this section.

(7) Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee.

(8) Gifts given to a public servant not otherwise subject to an exception under this subsection, where the gift is food and beverages, transportation, lodging, entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the gift, and the public servant did not accept the gift in exchange for the performance of the public servant's official duties.
b. The public servant reports electronically to the Commission within 30 days of receipt of the gift or of the date set for disclosure of public records under G.S. 132-6(d), if applicable. The report shall include a description and value of the gift and a description how the gift contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.
c. A tangible gift, other than food or beverages, not otherwise subject to an exception under this subsection shall be turned over as

State property to the Department of Commerce within 30 days of receipt, except as permitted under subsection (f) of this section.

(9) Gifts of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(10) Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship provided all of the following conditions are met:

a. The relationship is not related to the public servant's, legislator's, or legislative employee's public service or position.

b. The gift is made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying.

(11) Food and beverages for immediate consumption and related transportation provided all of the following conditions are met:

a. The food, beverage, or transportation is given by a lobbyist principal and not a lobbyist.

b. The food, beverage, or transportation is provided during a conference, meeting, or similar event and is available to all attendees of the same class as the recipient.

c. The recipient of the food, beverage, or transportation is a director, officer, governing board member, employee, or independent contractor of one of the following:

1. The lobbyist principal giving the food, beverage, or transportation.

2. A third party that received the funds to purchase the food, beverages, or transportation.

(12) Food and beverages for immediate consumption at an organized gathering of a person, the State, or a governmental unit to which a public servant is invited to attend for purposes primarily related to the public servant's public service or position, and to which at least 10 individuals, other than the public servant, or the public servant's immediate family, actually attend, or to which all shareholders, employees, board members, officers, members, or subscribers of the person or governmental unit who are located in a specific North Carolina office or county are notified and invited to attend.

(f) A prohibited gift that would constitute an expense appropriate for reimbursement by the public servant's employing entity if it had been incurred by the public servant personally shall be considered a gift accepted by or donated to the State, provided the public servant has been approved by the public servant's employing entity to accept or receive such things of value on behalf of the State. The fact that the employing entity's reimbursement rate for the type of expense is less than the value of a particular gift shall not render the gift prohibited.

(g) A prohibited gift shall be, and a permissible gift may be, promptly declined, returned, paid for at fair market value, or donated to charity or the State.

(h) A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a gift for purposes of subsection (c) of this section.

(i) Acceptance or solicitation of a gift in compliance with this section without corrupt intent shall not constitute a violation of the statutes related to bribery under G.S. 14-217, 14-218, or 120-86. (2006-201, s. 1; 2007-347, s. 11; 2007-348, ss. 15(b), 35-41(a); 2008-213, ss. 77(a), 78(a), 79-82, 90.)

Editor's Note. — Session Laws 2007-348, s. 44, as amended by Session Laws 2008-187, s. 32, and Session Laws 2008-213, s. 91, provides: "Sections 17, 23, 39, 40 and 41 of this act are effective January 1, 2007. Section 9 of this act is effective July 1, 2007. Sections 8, 11, 15, 20, 22, 25, and 42 of this act become effective October 1, 2007. Section 18 of this act becomes effective December 1, 2007. Section 34 of this act becomes effective January 1, 2008. The remainder of this act is effective when this act becomes law."

Effect of Amendments. —

Session Laws 2008-213, ss. 77(a) and 78(a), effective December 1, 2008, in subsection (c), in the introductory language, added the second sentence, and deleted "from a third party" following "shall accept a gift" near the end; in subdivision (c)(1), substituted "gift was obtained indirectly from a lobbyist, lobbyist principal, or liaison personnel" for "third party obtained the gift from a lobbyist or lobbyist principal"; in subdivision (c)(2), substituted "lobbyist, lobbyist principal, or liaison personnel" for "lobbyist or lobbyist principal"; in subsection (d1), deleted "from a third party" following "shall accept a gift" in the introductory language; in subdivision (d1)(1), substituted "gift was obtained indirectly" for "third party obtained the gift"; and in subdivision (d1)(2), substituted "ultimate recipient of the gift to be a" for "gift to benefit the."

Session Laws 2008-213, ss. 79 through 82, effective August 15, 2008, rewrote subdivision (e)(1); in subdivision (e)(3), substituted "legislator's or legislative employee's" for "person's" in clause (iii), substituted "public servant's" for "person's" in clause (iv); in subdivision (e)(5), inserted "use by the State or for"; in subdivision (e)(10)a, substituted "public servant's, legislator's, or legislative employee's" for "person's"; and in subdivision (e)(12), inserted "the State, or a governmental unit" and "or governmental unit."

Session Laws 2008-213, s. 90, effective August 15, 2008, in subdivisions (c)(1) and (e)(3)a, substituted "lobbyist principal" for "lobbyist's principal"; and substituted "lobbyist principals" for "lobbyist's principals" in subdivision (e)(6).

§ 138A-34. Use of information for private gain.

A public servant or legislative employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or legislative employee's official responsibilities in a way that would affect a personal financial interest of the public servant or legislative employee, a member of the public servant's or legislative employee's extended family, or a person or governmental unit with whom or business with which the public servant or legislative employee is associated. A public servant or legislative employee shall not improperly use or improperly disclose any confidential information. (2006-201, s. 1; 2008-213, s. 83.)

Effect of Amendments. — Session Laws 2008-213, s. 83, effective August 15, 2008, inserted "or governmental unit" in the first sentence.

§ 138A-36. Public servant participation in official actions.

(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall participate in an official action by the employing entity if the public servant knows the public servant or a person with which the public servant is associated may incur a reasonably foreseeable financial benefit from the matter under consideration, which financial benefit would impair the public servant's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the public servant's participation in the official action.

(b) A public servant described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself to the extent necessary, to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, partner, member or manager of a limited liability company, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain about whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the individual presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the individual presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-12 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

(e) This section shall not allow participation in an official action prohibited by G.S. 14-234. (2006-201, s. 1; 2007-347, s. 12; 2007-348, s. 42; 2008-213, s. 84(a).)

Effect of Amendments. —
Session Laws 2008-213, s. 84(a), effective August 15, 2008, rewrote subsection (a); and in subsection (d), inserted "about" in the first sentence and substituted "individual" for "person" twice.

§ 138A-37. Legislator participation in official actions.

(a) Except as permitted under G.S. 138A-38, no legislator shall participate in a legislative action if the legislator knows the legislator or a person with which the legislator is associated may incur a reasonably foreseeable financial benefit from the action, and if after considering whether the legislator's judgment would be substantially influenced by the financial benefit and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual financial benefit does exist which would impair the legislator's independence of judgment.

(a1) The legislator shall submit in writing to the principal clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter.

(b) If the legislator has a material doubt as to whether the legislator should act, the legislator may submit the question for an advisory opinion to the State Ethics Commission in accordance with G.S. 138A-13 or the Legislative Ethics Committee in accordance with G.S. 120-104. (2006-201, s. 1; 2007-347, s. 13; 2008-213, s. 84(b).)

Effect of Amendments. — Session Laws 2008-213, s. 84(b), effective August 15, 2008, rewrote subsection (a) and inserted the subsection (a1) designator.

§ 138A-38. Permitted participation exception.

(a) Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

(1) The only interest or reasonably foreseeable benefit or detriment that accrues to the covered person, the covered person's extended family, business with which the covered person is associated, or nonprofit corporation or organization with which the covered person is associated as a member of a profession, occupation, or general class is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) When an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.

(3) Before the covered person participated in the official or legislative action, the covered person requested and received from the Commission or Committee a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the Commission or Committee shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under G.S. 130-36, G.S. 138A-37, or this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant notifies the Commission in writing that the public servant judicial employee, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only

individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest.

(b) This section shall not allow participation in an official action prohibited by G.S. 14-234.

(c) Notwithstanding G.S. 138A-37, if a legislator is employed or retained by, or is an independent contractor of, a governmental unit, and the legislator is the only member of the house elected from the district where that governmental unit is located, then the legislator may take legislative action on behalf of that governmental unit provided the legislator discloses in writing to the principal clerk the nature of the relationship with the governmental unit prior to, or at the time of, taking the legislative action.

(d) Notwithstanding G.S. 138A-36, service by the president, chief financial officer, chief administrative officer, or voting member of the board of trustees of a community college as an officer, employee, or member of the board of directors of a nonprofit corporation established under G.S. 115D-20(9) to support the community college shall not constitute a conflict of interest under G.S. 138A-36, provided that the majority of the nonprofit corporation's board of directors is not comprised of the president, chief financial officer, and chief administrative officer, or voting members of the board of trustees of the community college which the nonprofit corporation was created to support. (2006-201, s. 1; 2007-347, s. 14; 2008-213, s. 85.)

Effect of Amendments. —
Session Laws 2008-213, s. 85, effective August 15, 2008, added subsections (c) and (d).

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 1B.

North Carolina Museum of Art.

Sec.
140-5.13. Board of Trustees — establishment; members; selection; quorum; compensation; officers; meetings.

Article 3.

North Carolina State Art Society.

Article 1B.

North Carolina Museum of Art.

§ 140-5.13. Board of Trustees — establishment; members; selection; quorum; compensation; officers; meetings.

(a) It is the duty of the Department of Cultural Resources to develop policy and to establish and enforce standards for resources, services, and programs involving the arts and the cultural aspects of the lives of the citizens of North Carolina. To attain these objectives, there is hereby established within the Department of Cultural Resources the Board of Trustees of the North Carolina Museum of Art.

(b) The Board of Trustees of the North Carolina Museum of Art shall consist of 29 members, chosen as follows:

(1) The Governor shall appoint 13 members, one from each congressional district in the State in accordance with G.S. 147-12(3b);

(2) The North Carolina State Art Society, Incorporated, shall elect four members;

(3) The North Carolina Museum of Art Foundation, Incorporated, shall elect four members;

(4) The Board of Trustees of the North Carolina Museum of Art shall elect four members;

(5) The General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;

(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 49.

All regular appointments or elections except those by the General Assembly shall be for terms of six years, except that each member shall serve until his successor is chosen and qualifies. No person may be appointed or elected to more than two consecutive terms of six years. All regular appointments by the General Assembly shall be for the then current legislative term, and no appointee of the General Assembly may be appointed to more than two consecutive terms of two years.

(c) Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. All other vacancies occurring in the regular membership of the Board of Trustees prior to the expiration of a term shall be filled by the same authority and in the same manner as the vacating member was chosen, and the successor member so chosen shall serve for the remainder of the unexpired term of the vacating member.

(d) All initial appointments and elections to the Board of Trustees shall be made on July 1, 1980, or as soon as feasible thereafter except as provided in this subsection, and the terms of all except the legislative appointees shall expire on June 30, 1983, or June 30, 1986, as the case may be. In order to establish regularly overlapping terms, initial appointments and elections to the Board of Trustees shall be made as follows:

(1) Four members at large shall be appointed by the Governor for initial terms of three years and four members at large shall be appointed by the Governor for initial terms of six years.

(2) One member shall be elected by the North Carolina State Art Society, Incorporated, for an initial term of three years and two members shall be elected by that Society for initial terms of six years.

(3) One member shall be elected by the North Carolina Museum of Art Foundation, Incorporated, for an initial term of three years and two members shall be elected by that Foundation for initial terms of six years.

(4) One member shall be elected by the Art Commission prior to July 1, 1980, for an initial term of three years and two members shall be elected by that Commission for initial terms of six years. Upon the expiration of the terms of those three members, their successors shall be elected by the Board of Trustees of the North Carolina Museum of Art.

(5) Three members shall be elected by the State Art Museum Building Commission to serve until the termination of that Commission or until June 30, 1983, whichever shall first occur. Upon the termination of the terms of those three members, should such termination occur prior to June 30, 1983, their successors shall be elected as follows: one by the North Carolina State Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art; the terms of the successor members so elected shall expire on June 30, 1983. On July 1, 1983, or as soon as feasible thereafter, the successors of these three members shall be elected for terms of six years, as follows: one by the North Carolina State Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art.

(6) The initial appointments by the General Assembly shall serve until June 30, 1983. Subsequent appointments shall be for two-year terms commencing July 1, 1983, and biennially thereafter.

(7) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 51.

Every vacancy occurring in the initial membership of the Board of Trustees prior to the expiration of a term of office shall be filled by the same authority and in the same manner as the vacating member was chosen and the successor member so appointed shall serve for the remainder of the unexpired term of the vacating member.

(e) Any member of the Board of Trustees may be removed from office by the authority that appointed or elected that member for misfeasance, malfeasance, or nonfeasance in office. In the case of an appointment made by the Governor, removal shall be made in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(f) A public officer who is appointed or elected to serve on the Board of Trustees shall be deemed to serve thereon as a trustee ex officio and his duties as a trustee shall be deemed additional duties of his primary public office.

(g) The Board of Trustees shall have a chairman, a vice-chairman, and such other officers as the Board deems necessary. The chairman shall be designated by the Governor from among the members of the Board. The vice-chairman shall be elected by and from among the members of the Board. The chairman and vice-chairman shall be chosen for terms of two years or for so long as they are members of the Board, whichever is the shorter period. The Director of the North Carolina Museum of Art shall serve as Secretary to the Board of Trustees and shall attend all meetings, except when the Board is considering issues related to the Director's performance of duties.

(h) The Board of Trustees shall meet at least once in each quarter. The Board may hold special meetings at any time and place within the State at the call of the chairman. The chairman may call a special meeting at his discretion, and he shall call a special meeting upon the written request of a majority of the authorized membership of the Board of Trustees.

(i) A majority of the authorized membership of the Board of Trustees shall constitute a quorum for the transaction of business.

(j) Members of the Board of Trustees who are officers or employees of State agencies or institutions shall receive from funds available to the Department of Cultural Resources subsistence and travel allowances at the rates authorized by G.S. 138-6. All other members of the Board of Trustees shall receive from funds available to the Department of Cultural Resources per diem and travel and subsistence allowances at the rates authorized by G.S. 138-5.

(k) All clerical and administrative services required by the Board of Trustees shall be supplied by the office of the Director of the North Carolina Museum of Art. (1979, 2nd Sess., c. 1306, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 49-52; 1987, c. 842, ss. 1, 2; 1991, c. 756, s. 35; 1995, c. 490, s. 8; 2001-486, s. 2.10; 2006-66, s. 22.22(b); 2006-221, s. 23; 2008-194, s. 6(d).)

Effect of Amendments. —

Session Laws 2008-194, s. 6(d), effective August 8, 2008, inserted "State" preceding "Art Society, Incorporated" once in subdivision (d)(2) and twice in subdivision (d)(5).

ARTICLE 3.

North Carolina State Art Society.

Editor's Note. — Session Laws 2008-194, s. 6(c), effective August 8, 2008, inserted "State" in the Article heading.

Chapter 142.

State Debt.

Article 9.

State Capital Facilities Finance Act.

Sec.
142-94. Procurement of capital facilities.

ARTICLE 1.

General Provisions.

§ 142-1. How bonds executed; interest coupons attached; where payable; not to be sold at less than par.

Two-Thirds Bonds Act of 2008. — Session Laws 2008-107, s. 27.9, as amended by Session Laws 2008-118, s. 2.7 (c) and (d), provides: "(a) Short Title. — This section may be cited as the 'Two-Thirds Bonds Act of 2008.'

"(b) Findings and Determinations. — It is the intent and purpose of the General Assembly by this section to provide for the issuance of general obligation bonds or notes of the State in order to provide funds for the cost of State capital facilities.

"(c) Definitions. — The following definitions apply in this section unless the context otherwise requires:

"(1) Bonds. — Bonds issued under this section.

"(2) Cost. — The term includes all of the following:

"a. The cost of constructing, reconstructing, renovating, repairing, enlarging, acquiring, and improving State capital facilities, including the acquisition of land, rights-of-way, easements, franchises, equipment, machinery, furnishings, and other interests in real or personal property acquired or used in connection with a State capital facility.

"b. The cost of engineering, architectural, and other consulting services as may be required.

"c. Administrative expenses and charges.

"d. The cost of providing personnel to ensure effective project management.

"e. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants and related costs of bond and note issuance, to the extent and as determined by the State Treasurer.

"f. Finance charges, reserves for debt service, and other types of reserves required pursuant to the terms of any bond or note or related documents, interest before and during construction or acquisition of a State capital facility and, if considered advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction or acquisition.

"g. The cost of bond insurance, investment contracts, credit enhancement facilities and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants, and related costs of the incurrence or issuance of any bond or note.

"h. The cost of reimbursing the State for any payments made for any cost described in this subdivision.

"i. Any other costs and expenses necessary or incidental to the purposes of this section.

"(3) Credit facility. — An agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.

"(4) Notes. — Notes issued under this section.

"(5) Par formula. — A provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:

"a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible.

"b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time.

"c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

"(6) State. — The State of North Carolina, including any State agency.

"(7) State agency. — Any agency, institution, board, commission, bureau, council, department, division, officer, or employee of the State. The term does not include counties, municipal corporations, political subdivisions, local boards of education, or other local public bodies.

"(d) Authorization of Bonds and Notes. — The State Treasurer is authorized, by and with the consent of the Council of State, to issue and sell at one time or from time to time in the fiscal year ending June 30, 2009 general obligation bonds of the State to be designated 'State of North Carolina General Obligation Bonds,' with any additional designations as may be determined, or notes of the State, in the aggregate principal amount of one hundred seven million dollars ($107,000,000), this amount being not in excess of two-thirds of the amount by which the State's outstanding indebtedness was reduced during the biennium ended June 30, 2008, for the purpose of providing funds, with any other available funds, for the purposes authorized by this section.

"If the one hundred seven million dollars ($107,000,000) maximum principal amount of bonds and notes authorized by this section shall be in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the biennium ended June 30, 2008, then the maximum amount of bonds and notes authorized in this section is reduced by such excess.

"(e) Uses of Bond and Note Proceeds. — The proceeds of bonds and notes shall be used for financing the cost of State capital facilities as provided in this section. Any additional moneys which may be received by grant from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any State capital facilities authorized by this section may be placed by the State Treasurer in a separate fund or funds and shall be disbursed, to the extent permitted by the terms of the grant, without regard to any limitations imposed by this section.

"The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for the cost of State capital facilities, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this section is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this section shall be disbursed for the purposes provided in this section upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the State Budget Act, Chapter 143C of the General Statutes.

"The Office of State Budget and Management shall provide semiannual reports to the Joint Legislative Oversight Committee on Capital Improvements, the Chairs of the Senate and House of Representatives Appropriation Committees, and the Fiscal Research Division on the expenditure of moneys authorized by this section. The reports shall continue until the completion of the projects provided for in this section.

"(f) Allocation of Proceeds. — The proceeds of bonds and notes shall be allocated and expended for paying the cost of the Green Square Project, Department of Environment and Natural Resources. The projected allocation may be increased to reflect the availability of other funds, including contingency funds, income earned on the investment of bond and note proceeds, and the proceeds of any grants. The Director of the Budget may, when the Director determines it is in the best interest of the State to do so, use any excess funds, as determined by the Director, to increase the allocation of the project. The Office of State Budget and Management shall provide semiannual reports to the Joint Legislative Oversight Committee on Capital Improvements, the Chairs of the Senate and House of Representatives Appropriation Committees, and the Fiscal Research Division as to the status of the project and allocations made under this subsection.

"(g) Issuance of bonds and notes. —

"(1) Terms and conditions. — Bonds or notes may bear a date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than or greater than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

"(2) Signatures; form and denomination; registration. — Bonds or notes may be issued in certificated or uncertificated form. If issued in certificated form, bonds or notes shall be signed on behalf of the State by the Governor or shall bear the Governor's facsimile signature, shall be signed by the State Treasurer or shall bear the State Treasurer's facsimile signature, and shall bear the Great Seal of the State, or a facsimile of the Seal shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery. Bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note, although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this section.

"(3) Manner of sale; expenses. — Subject to the approval by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at any rates of interest, which may vary from time to time, and at any prices, including a price less than or greater than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

"(4) Notes; repayment. —

"a. By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

"1. For anticipating the sale of bonds, the issuance of which the Council of State has approved, if the State Treasurer considers it advisable to postpone the issuance of the bonds;

"2. For the payment of interest on or any installment of principal of any bonds then outstanding, if there are not sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;

"3. For the renewal of any loan evidenced by notes authorized in this section;

"4. For the purposes authorized in this section; and

"5. For refunding bonds or notes as authorized in this section.

"b. Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this section. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of the bonds.

"(5) Refunding bonds and notes. — By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding bonds or notes issued pursuant to this section. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured. Refunding bonds or notes may be issued at any time prior to the final maturity of the debt obligation to be refunded. The proceeds from the sale of any refunding bonds or notes shall be applied to the immediate payment and retirement of the bonds or notes being refunded or, if not required for the immediate payment of the bonds or notes being refunded, the proceeds shall be deposited in trust to provide for the payment and retirement of the bonds or notes being refunded and to pay any expenses incurred in connection with the refunding. Money in a trust fund may be invested in (i) direct obligations of the United States government, (ii) obligations the principal of and interest on which are guaranteed by the United States government, (iii) obligations of any agency or instrumentality of the United States government if the timely payment of principal and interest on the obligations is unconditionally guaranteed by the United States government or (iv) certificates of deposit issued by a bank or trust company located in the State if the certificates are secured by a pledge of any of the obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. This section does not limit the duration of any deposit in trust for the retirement of bonds or notes being refunded but that have not matured and are not presently redeemable, or if presently redeemable, have not been called for redemption.

"(6) Tax exemption. — Bonds and notes shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting estate, inheritance or gift taxes, income taxes on the gain from the transfer of bonds or notes, and franchise taxes. The interest on bonds or notes is not subject to taxation as income.

"(7) Investment eligibility. — Bonds and notes are securities in which all of the following may invest, including capital in their control or belonging to them: public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

"(8) Faith and credit. — The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. The State expressly reserves the right to amend any provision of this section to the extent it does not impair any contractual right of a bond owner.

"(9) Other agreements. — The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, interest-rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with issuance, incurrence, carrying, or securing of bonds or notes. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, and bond attorneys to be associated with any bond or note issue under this section as the State Treasurer considers necessary.

"(h) Variable Rate Demand Bonds and Notes. — In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

"(1) Be made payable from time to time on demand or tender for purchase by the owner, if a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;

"(2) Be additionally supported by a credit facility;

"(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

"(4) Bear interest at a rate or rates that may vary for any period of time, as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and

"(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

"If the aggregate principal amount payable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

"(i) Interpretation of Section. —

"(1) Additional method. — The foregoing sections of this section shall be deemed to provide an additional and alternative method for the doing of the things authorized under it and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"(2) Statutory references. — References in this section to specific sections or Chapters of the General Statutes or to specific acts are intended to be references to such sections, Chapters, or acts as they may be amended from time to time by the General Assembly.

"(3) Broad construction. — This section, being necessary for the health and welfare of the people of the State, shall be broadly construed to effect the purposes thereof.

"(4) Inconsistent provisions. — Insofar as the provisions of this section are inconsistent with the provisions of any general, special, or local laws, or parts thereof, the provisions of this section shall be controlling.

"(5) Severability. — If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

"(j) Effective Date. — This section is effective when it becomes law."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 9.

State Capital Facilities Finance Act.

§ 142-83. Authorization of special indebtedness; General Assembly approval.

Editor's Note. —

Session Laws 2004-179, ss. 1, 1.1 and 1.2, as amended by Session Laws 2005-276, s. 30.3A, as amended by Session Laws 2006-146, s. 2.1, as amended by Session Laws 2006-231, s. 1, and as amended by Session Laws 2008-107, s. 27.8(b), provides: "This part may be cited as the State Capital Facilities Act of 2004.

"In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the following maximum aggregate principal amounts to finance the costs of the following projects. The table below provides the maximum principal amounts. The first column is the aggregate maximum principal amount. The second column is the maximum portion of this amount that can be issued or incurred before July 1, 2005. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of these projects.

Aggregate Maximum	Maximum before 7/1/05	Project
$180,000,000	$110,000,000	Acquiring, constructing, and equipping a new cancer rehabilitation and treatment center, a nearby physicians' office building, and a walkway between the two, all to be located at the University of North Carolina Hospitals at Chapel Hill.
60,000,000	30,000,000	Acquiring, constructing, and equipping the North Carolina Cardiovascular Diseases Institute at East Carolina University.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Bioinformatics Center at the University of North Carolina at Charlotte.
28,000,000	25,000,000	Acquiring, constructing, and equipping a stand-alone facility to house the new Pharmacy School program to be located at Elizabeth City State University, and interim temporary facilities to house the program during construction of the facility.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Center for Health Promotion and Partnerships at the University of North Carolina at Asheville.

10,000,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction for the Southeastern North Carolina Nursing Education and Research Center at Fayetteville State University.
10,000,000	10,000,000	Site preparation, engineering, architectural, and other consulting services, and the construction of a research building on the joint Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro.
10,000,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction of a Nursing and Allied Health Building at the University of North Carolina at Pembroke.
10,000,000	10,000,000	To Western Carolina University for land acquisition, site preparation, engineering, architectural, and other consulting services, and construction of a building for Western Carolina University and the Mountain Area Health Education Consortium for the North Carolina Center for Health and Aging to be operated as a consortium among Western Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium.
11,500,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction of a Center for Design Innovation in the Piedmont Triad Research Park to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts.
TOTAL: $389,500,000	$265,000,000	

"In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of forty-two million dollars ($42,000,000) to finance the costs of constructing up to five youth development centers totaling up to 224 beds to be operated by the Department of Juvenile Justice and Delinquency Prevention and to be located as determined by that Department. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of constructing the projects described by this section. Of the special indebtedness authorized by this section, no more than thirteen million dollars ($13,000,000) may be issued or incurred before July 1, 2005."

Session Laws 2006-66, s. 23.12(a)-(h), as amended by Session Laws 2008-107, s. 27.8(c), authorizes the issuance or incurrence of special indebtedness to finance the capital facility costs of various construction projects.

Session Laws 2008-107, s. 27.8(a), provides: "The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the projects described in this subsection. In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness:

"(1) In the maximum aggregate principal amount of sixty-nine million dollars ($69,000,000) to finance the capital facility costs of completing a School of Dentistry building at East Carolina University and no more than 10 satellite dental clinics across the State. No more than a maximum aggregate amount of twenty-one million dollars ($21,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of sixty million dollars ($60,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

"(2) In the maximum aggregate principal amount of thirty-six million eight hundred thousand dollars ($36,800,000) to finance the capital facility costs of completing a family medicine building at East Carolina University. No more than a maximum aggregate amount of sixteen million six hundred thousand dollars ($16,600,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

"(3) In the maximum aggregate principal amount of eighteen million dollars ($18,000,000) to finance the capital facility costs of completing a School of Education building at Elizabeth City State University. No more than a maximum aggregate amount of seven million dollars ($7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of fifteen million dollars ($15,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

"(4) In the maximum aggregate principal amount of two million four hundred thirty-eight thousand dollars ($2,438,000) to finance the capital improvement costs of acquiring land and constructing capital facilities for a horse park in Rockingham County for North Carolina Agricultural and Technical State University.

"(5) In the maximum aggregate principal amount of twenty million four hundred ninety thousand dollars ($20,490,000) to finance the capital facility costs of completing a general classroom building at North Carolina Agricultural and Technical State University. No more than a maximum aggregate amount of seven million dollars ($7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

"(6) In the maximum aggregate principal amount of twenty-four million five hundred thousand dollars ($24,500,000) to finance the capital facility costs of completing a nursing building at North Carolina Central University. No more than a maximum aggregate amount of six million dollars ($6,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of seventeen million dollars ($17,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

"(7) In the maximum aggregate principal amount of eleven million one hundred thousand dollars ($11,100,000) to finance the capital facility costs of completing a central storage facility at the North Carolina School of the Arts.

"(8) In the maximum aggregate principal amount of twelve million nine hundred thousand dollars ($12,900,000) to finance the capital facility costs of completing a film school production facility at the North Carolina School of the Arts. No special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of two million dollars ($2,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of seven million nine hundred thousand dollars ($7,900,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.

"(9) In the maximum aggregate principal amount of one hundred nine million one hundred thousand dollars ($109,100,000) to finance the capital facility costs of completing the Centennial Campus library at North Carolina State University. No more than a maximum aggregate amount of forty-nine million dollars ($49,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of sixty-eight million one hundred thousand dollars ($68,100,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of one hundred million one hundred thousand dollars ($100,100,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.

"(10) In the maximum aggregate principal amount of four million dollars ($4,000,000) for the capital facility costs of completing the 4-H Campuses at North Carolina State University.

"(11) In the maximum aggregate principal amount of sixty-nine million dollars ($69,000,000) to finance the capital facility costs of completing a School of Dentistry expansion at the University of North Carolina at Chapel Hill. No special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of twenty-five million dollars ($25,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of sixty-one million dollars ($61,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.

"(12) In the maximum aggregate principal amount of fifty-seven million two hundred eighteen thousand dollars ($57,218,000) to finance the capital facility costs of completing the Energy Production Infrastructure Center at the University of North Carolina at Charlotte. No more than a maximum aggregate amount of ten million dollars ($10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of thirty-two million two hundred eighteen thousand dollars ($32,218,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

"(13) In the maximum aggregate principal amount of forty-two million six hundred seventy thousand dollars ($42,670,000) to finance the capital facility costs of completing an academic classroom and office building at the University of North Carolina at Greensboro. No more than a maximum aggregate amount of twenty-one million dollars ($21,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

"(14) In the maximum aggregate principal amount of ten million dollars ($10,000,000) to finance the capital facility costs of installing fire sprinklers in The University of North Carolina System residence halls.

"(15) In the maximum aggregate principal amount of twenty-five million dollars ($25,000,000) to finance the capital improvement costs of acquiring State land throughout The University of North Carolina System.

"(16) In the maximum aggregate principal amount of thirty-four million dollars ($34,000,000) to finance the capital improvement costs of purchasing State judicial facilities located at 901 Corporate Drive, Raleigh, NC, and more particularly described as Phase Two, Tract A of Raleigh Corporate Center consisting of 17.28 acres and as shown on the map recorded in Map book 1987, page 720, and Map book 1990, page 576, of the Wake County Register of Deeds.

"(17) In the maximum aggregate principal amount of forty-five million one hundred seventy thousand dollars ($45,170,000) to finance the capital facility costs of completing a health care and mental health facility at the North Carolina Correctional Institute for Women. No more than a maximum aggregate amount of twenty-seven million dollars ($27,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

"(18) In the maximum aggregate principal amount of thirteen million ten thousand dollars ($13,010,000) to finance the capital facility costs of completing a minimum security addition at Scotland Correctional Institution. No more than a maximum aggregate amount of six million dollars ($6,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of ten million dollars ($10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

"(19) In the maximum aggregate principal amount of eighteen million nine hundred fifty thousand dollars ($18,950,000) to finance the capital facility costs of completing a medium security addition at Bertie Correctional Institution. No more than a maximum aggregate amount of seven million dollars ($7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of fourteen million dollars ($14,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

"(20) In the maximum aggregate principal amount of thirteen million ten thousand dollars ($13,010,000) to finance the capital facility costs of completing a minimum security addition at Tabor Correctional Institution. No more than a maximum aggregate amount of six million dollars ($6,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of ten million dollars ($10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

"(21) In the maximum aggregate principal amount of eighteen million nine hundred fifty thousand dollars ($18,950,000) to finance the capital facility costs of completing a medium security addition at Lanesboro Correctional Institution. No more than a maximum aggregate amount of seven million dollars ($7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of fourteen million dollars ($14,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

"(22) In the maximum aggregate principal amount of two million nine hundred twenty-five thousand dollars ($2,925,000) to finance the capital facility costs of completing Phase I of the CSS Neuse State Historic Site.

"(23) In the maximum aggregate principal amount of seven million dollars ($7,000,000) to finance the capital facility costs of completing Port of Morehead City Berth Improvements and Phase I of Port of Wilmington Berth 8 Improvements.

"(24) In the maximum aggregate principal amount of three million seven hundred thousand dollars ($3,700,000) to finance the capital facility costs of completing a Southeastern North Carolina Agriculture Center Pavilion.

"(25) In the maximum aggregate principal amount of eight million one hundred thousand dollars ($8,100,000) to finance the capital facility costs of Department of Agriculture and Consumer Services capital improvements. Sales proceeds shall be allocated between the projects in the following manner:

"Project	**Allocation of Sales Proceeds**
"Bathroom and truckshed expansion at The Western North Carolina Farmers' Market	$650,000
"Davis Arena renovation and expansion at The Western North Carolina Agricultural Center	$7,450,000

"(26) In the maximum aggregate principal amount of four million three hundred three thousand nine hundred forty-four dollars ($4,303,944) to finance the capital facility costs of completing an oyster hatchery.

"(27) In the maximum aggregate principal amount of two million seven hundred thousand dollars ($2,700,000) to finance the capital improvement costs of completing an expansion and renovation to the polar bear exhibit at the North Carolina Zoo.

"(28) In the maximum aggregate principal amount of fifty million dollars ($50,000,000) to finance the capital improvement costs of acquiring State park lands and conservation areas for the Land for Tomorrow initiative in the Department of Environment and Natural Resources. Proceeds shall be allocated to support the conservation priorities of the One North Carolina Naturally program."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2008-118, s. 3.8, provides: "Section 1.1 of S.L. 2004-179, as amended by Section 30.3A of S.L. 2005-276 and Section 2.1 of S.L. 2006-146, authorized the State to issue or incur special indebtedness in order to provide funds to the State for Western Carolina University to be used, together with other available funds, to pay the cost of land acquisition, site preparation, engineering, architectural, and other consulting services and construction of a building for Western Carolina University and the Mountain Area Health Education Consortium for the North Carolina Center for Health and Aging to be operated as a consortium among Western Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium.

"Western Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium may expend available funds, including appropriations, for the operation and maintenance of this facility." Section 1.1 of Session Laws 2004-179, as amended, is noted above, in full.

§ 142-94. Procurement of capital facilities.

The provisions of Articles 3, 3B, 3C, 3D, and 8 of Chapter 143 of the General Statutes and any other laws or rules of the State that relate to the acquisition and construction of State property apply to the financing of capital facilities through the use of special indebtedness pursuant to this Article. This section does not apply to the construction and lease-purchase, including leases with an option to purchase at the end of the lease term for a nominal sum, of State office buildings pursuant to proposals submitted before the effective date of this Article in response to requests for proposals, to the extent any of those proposals, as they may be supplemented or amended, are approved by the Department of Administration and any of these leases or lease-purchase agreements are approved by the Council of State in accordance with G.S. 143-341(4)d2. With the exception of Article 8 of Chapter 143 of the General Statutes, this section does not apply to any special indebtedness issued pursuant to this Article for the purchase, construction, or operation of capital facilities by Gateway University Research Park, Inc., a joint Millennial Campus in Greensboro. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79; 2008-204, s. 3.)

Effect of Amendments. — Session Laws 2008-204, s. 3, effective August 8, 2008, added the last sentence.

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143-433.9. Allocation.

Article 68.

Regulation of Boxing.

143-652.2. Boxing Advisory Commission.

Article 75.

Tobacco Trust Fund.

143-722. Reporting.

ARTICLE 3.

Purchases and Contracts.

§ 143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.

Editor's Note. — Session Laws 2008-201, s. 1, provides: "The North Carolina Department of Administration, Division of Purchase and Contract, is directed to make the following changes to its Request for Proposal criteria for a statewide tire retread contract:

"(1) Require that the bids remain closed until a designated and advertised bid-opening day in which the bids are opened, announced, and recorded in public. The bids shall then be shown and made available to the public.

"(2) Require that the cost of the tire retread include spot repairs and that there no longer be a separate charge for a spot repair.

"(3) Include in the contract that all casings receive a state-of-the-art inspection with the use of shearography, ultrasound, electrostatic discharge, high pressure testing, or other industry standard testing methodology.

"(4) Include a threshold for the number of times a casing may be retreaded.

"(5) Include a threshold for the age of a casing that may be retreaded.

"(6) Include the number of nail hole repairs that are permissible for a casing to be retreaded.

"(7) Provide assurance that a particular fleet will receive its own casings back after retread completed.

"(8) Set minimum tread depths per category or application of the retread tire.

"(9) Consider a multiaward contract structure that includes several vendors; the Office of Purchase and Contract will take into account geographic location, proximity of vendor to customer, and the needs of the users when creating a multiaward contract.

"(10) Provide for any method of tire retreading to be bid separately."

§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.

Editor's Note. —
Session Laws 2008-201, s. 1, provides: "The North Carolina Department of Administration, Division of Purchase and Contract, is directed to make the following changes to its Request for Proposal criteria for a statewide tire retread contract:

"(1) Require that the bids remain closed until a designated and advertised bid-opening day in which the bids are opened, announced, and recorded in public. The bids shall then be shown and made available to the public.

"(2) Require that the cost of the tire retread include spot repairs and that there no longer be a separate charge for a spot repair.

"(3) Include in the contract that all casings receive a state-of-the-art inspection with the use of shearography, ultrasound, electrostatic discharge, high pressure testing, or other industry standard testing methodology.

"(4) Include a threshold for the number of times a casing may be retreaded.

"(5) Include a threshold for the age of a casing that may be retreaded.

"(6) Include the number of nail hole repairs that are permissible for a casing to be retreaded.

"(7) Provide assurance that a particular fleet will receive its own casings back after retread completed.

"(8) Set minimum tread depths per category or application of the retread tire.

"(9) Consider a multiaward contract structure that includes several vendors; the Office of Purchase and Contract will take into account geographic location, proximity of vendor to customer, and the needs of the users when creating a multiaward contract.

"(10) Provide for any method of tire retreading to be bid separately."

§ 143-52.1. Board of Awards.

Editor's Note. —
Session Laws 2007-169, s. 2, as amended by Session Laws 2008-187, s. 45, provides: "Notwithstanding G.S. 143-52.1 and S.L. 2006-203, through June 30, 2009, the members of the Advisory Budget Commission in office on June 30, 2007, shall continue to be eligible for appointment to the Board of Awards, and vacancies may be filled by the appointing authority. Through June 30, 2009, the Secretary of Administration shall appoint the Board of Awards from among those eligible."

§ 143-58.2. State policy; bid procedures and specifications; identification of products.

Editor's Note. — Session Laws 2008-201, s. 1, provides: "The North Carolina Department of Administration, Division of Purchase and Contract, is directed to make the following changes to its Request for Proposal criteria for a statewide tire retread contract:

"(1) Require that the bids remain closed until a designated and advertised bid-opening day in which the bids are opened, announced, and recorded in public. The bids shall then be shown and made available to the public.

"(2) Require that the cost of the tire retread include spot repairs and that there no longer be a separate charge for a spot repair.

"(3) Include in the contract that all casings receive a state-of-the-art inspection with the use of shearography, ultrasound, electrostatic discharge, high pressure testing, or other industry standard testing methodology.

"(4) Include a threshold for the number of times a casing may be retreaded.

"(5) Include a threshold for the age of a casing that may be retreaded.

"(6) Include the number of nail hole repairs that are permissible for a casing to be retreaded.

"(7) Provide assurance that a particular fleet will receive its own casings back after retread completed.

"(8) Set minimum tread depths per category or application of the retread tire.

"(9) Consider a multiaward contract structure that includes several vendors; the Office of Purchase and Contract will take into account geographic location, proximity of vendor to customer, and the needs of the users when creating a multiaward contract.

"(10) Provide for any method of tire retreading to be bid separately."

Article 3B.

Conservation of Energy, Water, and Other Utilities in Government Facilities.

Part 1. Energy Policy and Life-Cycle Cost Analysis.

§ 143-64.12. Authority and duties of the Department; State agencies and State institutions of higher learning.

(a) The Department of Administration through the State Energy Office shall develop a comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning and shall update this program annually. Each State agency and State institution of higher learning shall develop and implement a management plan that is consistent with the State's comprehensive program under this subsection to manage energy, water, and other utility use. The energy consumption per gross square foot for all State buildings in total shall be reduced by twenty percent (20%) by 2010 and thirty percent (30%) by 2015 based on energy consumption for the 2002-2003 fiscal year. Each State agency and State institution of higher learning shall update its management plan annually and include strategies for supporting the energy consumption reduction requirements under this subsection. Each community college shall submit to the State Energy Office an annual written report of utility consumption and costs.

(a1) State agencies and State institutions of higher learning shall carry out the construction and renovation of facilities in such a manner as to further the policy set forth under this section and to ensure the use of life-cycle cost analyses and practices to conserve energy, water, and other utilities.

(b) The Department of Administration shall develop and implement policies, procedures, and standards to ensure that State purchasing practices improve efficiency regarding energy, water, and other utility use and take the cost of the product over the economic life of the product into consideration. The Department of Administration shall adopt and implement Building Energy Design Guidelines. These guidelines shall include energy-use goals and standards, economic assumptions for life-cycle cost analysis, and other criteria on building systems and technologies. The Department of Administration shall modify the design criteria for construction and renovation of facilities of State buildings and State institutions of higher learning buildings to require that a life-cycle cost analysis be conducted pursuant to G.S. 143-64.15.

(b1) The Department of Administration, as part of the Facilities Condition and Assessment Program, shall identify and recommend energy conservation maintenance and operating procedures that are designed to reduce energy consumption within the facility of a State agency or a State institution of higher learning and that require no significant expenditure of funds. Every State agency or State institution of higher learning shall implement these recommendations. Where energy management equipment is proposed for any facility of a State agency or of a State institution of higher learning, the maximum interchangeability and compatibility of equipment components shall be required. As part of the Facilities Condition and Assessment Program under this section, the Department of Administration shall develop an energy audit and a procedure for conducting energy audits. Every five years the Department shall conduct an energy audit for each State agency or State institution of higher learning.

(c) through (g) Repealed by Session Laws 1993, c. 334, s. 4.

(h) When conducting an energy audit under this section, the Department of Administration shall identify and recommend any facility of a State agency or State institution of higher learning as suitable for building commissioning to reduce energy consumption within the facility or as suitable for installing an energy savings measure pursuant to a guaranteed energy savings contract under Part 2 of this Article.

(i) Consistent with G.S. 150B-2(8a)h., the Department of Administration may adopt architectural and engineering standards to implement this section. (1975, c. 434, s. 3; 1993, c. 334, s. 4; 2000-140, s. 76(f); 2001-415, s. 3; 2006-190, s. 12; 2007-546, s. 3.1(a); 2008-198, s. 11.1.)

Effect of Amendments. — Session Laws 2008-198, s. 11.1, effective August 8, 2008, substituted "2002-2003" for "2003-2004" in the third sentence of subsection (a).

Part 2. Guaranteed Energy Savings Contracts for Governmental Units.

§ 143-64.17. Definitions.

Editor's Note. — Session Laws 2007-546, s. 2.1(a) to (d), as amended by Session Laws 2008-203, s. 6, provides: "(a) The Department of Administration shall administer and oversee the implementation of a program whereby all of the following energy conservation measures, as defined in G.S. 143-64.17, shall be fully implemented no later than December 31, 2009, in each building owned by the State, The University of North Carolina, or the North Carolina Community College System:

"(1) Lighting Systems. — The installation of exit signs that employ light-emitting diode (LED) technology or photo luminescent technology; the replacement of incandescent light bulbs with compact fluorescent light bulbs; and where appropriate, as determined by the Department of Administration, the installation of occupancy sensors or optical sensors.

"(2) Water Systems. — The installation of aerators in sink faucets that reduce the flow of water to a rate of no more than five-tenths gallons per minute (0.5 g.p.m.); the installation of shower heads that reduce the flow of water to a rate of no more than one and five-tenths gallons per minute (1.5 g.p.m.); where appropriate, as determined by the Department of Administration, the resetting of hot water heaters to a water temperature of 120 degrees; the training of staff to monitor the use of irrigation systems and to base the use of the system on the moisture content of the soil, and either the elimination of potable water for irrigation or the reduction of water consumption in the building by twenty percent (20%) based on water consumption for the 2002-2003 fiscal year.

"(3) Heating, Ventilation, and Air-Conditioning (HVAC) Systems. — For HVAC equipment that is subject to replacement, the review of the specifications for the replacement HVAC equipment to ensure that it is not oversized; and, for building automation systems that are programmable, the training to ensure that these systems are properly programmed.

"(4) Minor Equipment. — For minor motorized equipment that is subject to replacement, the replacement of minor equipment with equipment that has premium efficiency motors. For purposes of this subdivision, 'premium efficiency motor' means a motor that meets or exceeds a set of minimum full-load efficiency standards developed by the National Electrical Manufacturers Association (NEMA).

"(5) Other Energy Conservation Measures. — Disconnect lamps in drink vending machines; use power save feature on computers, monitors, copiers, fax machines, and other office equipment; and when purchasing office equipment or appliances, purchase only Energy Star office equipment and appliances.

"(b) Consistent with G.S. 150B-2(8a)h., the Department of Administration shall develop or revise its architectural and engineering standards to provide assistance in determining which energy conservation measures are best suited to the unique characteristics of each building and in determining the specifications for the energy conservation measures under this section. The development or revision of the architectural and engineering standards shall be completed by February 1, 2008.

"(c) Prior to implementing this section and no later than February 1, 2008, the Department of Administration shall report to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission on its plan to implement this section.

"(d) In order to protect the integrity of historic buildings, this section does not apply to the extent it would require the implementation of measures to conserve energy, water, or other utility use that conflict with respect to any property eligible for, nominated to, or entered on the National Register of Historic Places, pursuant to the National Historic Preservation Act of 1966, P.L. 89-665; any historic building located within an historic district as provided in Chapter 160A or 153A of the General Statutes; any historic building listed, owned, or under the jurisdiction of an historic properties commission as provided in Chapter 160A or 153A; or any historic property owned by the State or assisted by the State."

ARTICLE 3D.

Procurement of Architectural, Engineering, and Surveying Services.

§ 143-64.31. Declaration of public policy.

Local Modification. — Cherokee: 2007-48, s. 1; Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004); (As to water treatment and wastewater treatment plant expansion projects) Harnett: 2007-214, s. 1 (expires December 31, 2010); Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2002-93, s. 2 (expires June 30, 2005); 2008-40 (as to contracts for renovations to the county courthouse); city of Charlotte (as to water and wastewater treatment plants): 2007-312, s. 1.

Editor's Note. — Session Laws 2008-107, s. 27.7A, provides: "The Department of Administration shall contract with North Carolina Freedom Monument Project, Inc., a nonprofit corporation, for the design and construction of the North Carolina Freedom Project. Notwithstanding G.S. 143-64.31 through 143-64.34 and G.S. 143-135.26, North Carolina Freedom Monument Project, Inc., shall select the designer and consultant for the project."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143-64.32. Written exemption of particular contracts.

Local Modification. — Cherokee: 2007-48, s. 1; Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004); (As to water treatment and wastewater treatment plant expansion projects) Harnett: 2007-214, s. 1 (expires December 31, 2010); Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2002-93, s. 2 (expires June 30, 2005); 2008-40 (as to contracts for renovations to the county courthouse); city of Charlotte (as to water and wastewater treatment plants): 2007-312, s. 1.

ARTICLE 8.

Public Contracts.

§ 143-128. Requirements for certain building contracts.

Local Modification. — (As to Article 8) Alleghany: 1989, c. 211, s. 1; (As to Article 8, except G.S. 143-128.2 and G.S. 143-128.3) Burke: 2007-35, s. 1 (expires December 31, 2011); Cherokee: 2007-48, s. 1; Chowan: 1989, c. 397, s. 1; Clay: 2006-94, s. 1; Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1; Dare: 1989, c. 177, s. 1; 1999-40, s. 1; 2003-47, s. 1 (as to design and construction of administration building and renovation of Old Dare Court House, and expires July 1, 2008); Davidson: 1989, c. 398, s. 1; Durham: 1985 (Reg. Sess., 1986), c. 908; (as to Article 8) Forsyth: 2001-54; Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; (as to G.S. 143-128) Greene: 1953, c. 718; (As to water treatment and wastewater treatment plant expansion projects) Harnett: 2007-214, s. 1 (expires December 31, 2010); Iredell: (as to animal shelter project) 2008-67, s. 1 (expires July 1, 2010); Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; (as to Art. 8) 1997-37; 2008-40 (as to contracts for renovations to the county courthouse); Mecklenburg: 1993 (Reg. Sess., 1994), c. 573, s. 1; New Hanover: 1983, c. 365; (As to contracts with Water and Sewer Authority) 2007-135, s. 1 (expires December 31, 2009); Pasquotank: 1989, c. 268, s. 3; 1989, c. 468, s. 1; Stokes: 2006-50, s.1; Surry: 1993 (Reg. Sess., 1994), c. 705, s. 1; ; Tyrrell: 1983, c. 208; 1985, c. 120; 1987, c. 58, s. 1; 1987, c. 58, s. 2; Union: 1991, c. 393, s. 1; Wilson: 1991, c. 200; (as to Article 8) city of Charlotte: 2000-26, s. 1; (as to Article 8) 2001-248, ss. 1, 2; (as to Article 8) 2001-329, s. 4, as amended by 2007-255, s. 1; (as to G.S. 143-128, and as to water and wastewater treatment plants) 2007-312, s. 1; (as to G.S. 143-128, and as to speedway area infrastructure projects) city of Concord: 2008-7, s. 1 (expires December 31, 2013); (as to Article 8) city of Durham: 1985, c. 714; 1985, c. 727; 1987, c. 789; 2001-350, s. 3; (As to Article 8) 1991, c. 107; city of Greensboro: 1995, c. 54, s. 1; (as to Article 8) city of Greenville: 1998-144; 2004-10 (expires January 1, 2010); city of Lumberton: 1983 (Reg. Sess., 1984), c. 996; (As to Article 8) city of Mount Airy: 2003-281, s. 1; city of Roanoke Rapids: 2001-425, s. 3; 2005-174, s. 2; (as to Article 8, except for G.S. 143-128.2 and 143-128.3) 2005-174, s. 3 (expires January 1, 2009); (As to contracts with Water and Sewer Authority) city of Wilmington: 2007-135, s. 1 (expires December 31, 2009); (as to Article 8) city of Winston-Salem: 2001-54; town of Ahoskie: 1987 (Reg. Sess., 1988), c. 884; town of Blowing Rock: 2006-171, s. 10 (public parking facility); town of Clayton: 1995, c. 125, s. 1; (as to Article 8) town of Garner: 1993, c. 281, s. 4; town of Louisburg: 2007-216, s. 3 (expires January 1, 2009); town of Manteo: 1985 (Reg. Sess., 1986), c. 808; Mooresville: (as to sewer pumping station) 2008-67, s. 2; town of Yadkinville: 1997-3, s. 1; (as to Article 8) village of Bald Head Island: 1989 (Reg. Sess., 1990), c. 925, s. 1; Alamance-Caswell Area Mental Health, Developmental Disabilities and Substance Abuse Authority: 1987, c. 120; Albemarle Hospital Board of Trustees: 1989, c. 468, s. 2; Charlotte/Mecklenburg Board of Education: 1999-207, ss. 3, 4; 2001-496, s. 10(c); Currituck County Board of Education and City of Albemarle: 1989, c. 409, s. 1; 1999-102, s. 1; 2001-496, s. 10(b); (As to Article 8, except G.S. 143-128.2 and G.S. 143-128.3) Piedmont Community College: 2007-35, s. 1 (expires December 31, 2011); (as to Chapter 143, Articles 3 and 8) Piedmont Triad International Authority: 1998-55, s. 11; 2002-146, s. 8 (expires January 1, 2010); Tyrrell County Board of Education: 1983, c. 580; 1985, c. 120; Union County Public Schools Board of Education: 2007-90, ss. 2 and 3 (expires July 1, 2011); (as to Article 8) University of North Carolina at Chapel Hill and East Carolina University: 1987, c. 803, s. 3; University of North Carolina at Chapel Hill: 1985 (Reg. Sess., 1986), c. 865, s. 3; Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1; 2003-269, s. 1.

§ 143-129. Procedure for letting of public contracts.

Local Modification. — Cherokee: 2007-48, s. 1; Clay: 2006-94, s. 1; Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1; Dare: 1999-40, s. 1; 2003-47, s. 1 (as to design and construction of administration building and renovation of Old Dare Court House, and expires July 1, 2008); Forsyth: 1987 (Reg. Sess., 1988), c. 927; 1993, c. 128, s. 1; Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; Greene: 1953, c. 718; Guilford: 1987 (Reg. Sess., 1988), c. 1010, s. 2; (As to water treatment and wastewater treatment plant expansion projects) Harnett: 2007-214, s. 1 (expires December 31, 2010); Iredell: (as to animal shelter project) 2008-67, s. 1 (expires July 1, 2010); Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2008-40 (as to contracts for renovations to the county courthouse); Mecklenburg: 1987, cc. 184, 220, 823; 1989, c. 150, s. 1; 1993 (Reg. Sess., 1994), c. 709, s. 1; 1997-184, s. 1; (As to contracts with Water and Sewer Authority) New Hanover: 2007-135, s. 1 (expires December 31, 2009); Pasquotank: 1979, 2nd Sess., c. 1164; 1989, c. 268, s. 3; Stokes: 2006-50, s. 1; Surry: 1993 (Reg. Sess., 1994), c.705, s. 1; Union: 1991, c. 393, s. 1; Wilson: 1991, c. 200; city of Bessemer City: 1985 (Reg. Sess., 1986), c. 959; 1981, c. 89; 1987, cc. 151, 329, s. 1; 1991, c. 200; city of Charlotte: 1995, c. 273, s. 1; 2000-26, s. 1; 2002-91, s. 1, as amended by 2007-255, s. 1, and as amended by 2008-101; (as to water and wastewater treatment plants) 2007-312, s. 1; (as to speedway area infrastructure projects) city of Concord: 2008-7, s. 1 (expires December 31, 2013); city of Durham: 1983, c. 458; 1991 (Reg. Sess., 1992), c. 992, s. 1; 2001-350, s. 3; city of Greensboro: 1987, c. 53, ss. 1, 2; 1987

(Reg. Sess., 1988), c. 1010, s. 2; 1995, c. 218, s. 1; city of Greenville; 1989, c. 18, s. 1; city of Lexington: 1987, c. 21; city of Kings Mountain: 1985 (Reg. Sess., 1986), c. 959; 1981, c. 89; city of Monroe: 1989, c. 18, s. 1; 2000-35, s. 1; city of Raleigh: 2007-333, s. 1; city of Roanoke Rapids: 2001-245, s. 3; 2005-174, s. 2; city of Rocky Mount; 1989, c. 18, s. 1; city of Shelby: 1987, c. 87; (As to contracts with Water and Sewer Authority) city of Wilmington: 2007-135, s. 1 (expires December 31, 2009); city of Wilson: 1985 (Reg. Sess., 1986), c. 871; 1987 (Reg. Sess., 1988), c. 1108, s. 11; city of Winston-Salem: 1985, c. 632; 1987, c. 575; 1987 (Reg. Sess., 1988), c. 927; town of Blowing Rock: 2006-171, s. 10 (public parking facility); town of Clayton: 1995, c. 125, s. 1; town of Louisburg: 2007-216, s. 3 (expires January 1, 2009); town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Southern Shores: 1995, c. 70, s. 1; town of Yadkinville, 1997-3, s. 1; Alamance-Caswell Area Mental Health, Developmental Disabilities and Substance Abuse Authority: 1987, c. 120; Albermarle Hospital Board of Trustees: 1989, c. 468, s. 2; Bladen County Board of Education: 1973, c. 891; Charlotte-Mecklenburg Board of Education: 1981, c. 477; 1999-207, ss. 2, 3, 4; 2001-496, s. 10(c); Forsyth/Stokes Area Mental Health, Developmental Disabilities and Substance Abuse Authority: 1987 (Reg. Sess., 1988), c. 927; Lee Board of Education: 1953, c. 228; Union County Public Schools Board of Education: 2007-90, s. 1-3 (expires July 1, 2011); University of North Carolina at Chapel Hill: 1985 (Reg. Sess., 1986), c. 865, s. 3; Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1; 2003-269, s. 1.

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

Local Modification. — Cherokee: 2007-48, s. 1; Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1; Dare: 1999-40, s. 1; 2003-47, s. 1 (as to design and construction of administration building and renovation of Old Dare Court House, and expires July 1, 2008); Forsyth: 1993, c. 128, s. 1; Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; (As to water treatment and wastewater treatment plant expansion projects) Harnett: 2007-214, s. 1 (expires December 31, 2010); Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2008-40 (as to contracts for renovations to the county courthouse); (As to contracts with Water and Sewer Authority) New Hanover: 2007-135, s. 1 (expires December 31, 2009); city of Charlotte: 2000-26, s. 1; 2002-91, s. 1, as amended by 2007-255, s. 1, and as amended by 2008-101; (as to water and wastewater treatment plants) 2007-312, s. 1; (as to speedway area infrastructure projects) city of Concord: 2008-7, s. 1 (expires December 31, 2013); city of Durham: 2001-350, s. 3; city of Greensboro: 1951, c. 707, s. 5; 1987, c. 53, s. 3; 1995, c. 218, s. 2; city of Raleigh: 2007-333, s. 1; (As to contracts with Water and Sewer Authority) city of Wilmington: 2007-135, s. 1 (expires December 31, 2009); city of Winston-Salem: 1985, c. 632; 1987, c. 575; town of Clayton: town of Louisburg: 2007-216, s. 3 (expires January 1, 2009); town of Manteo: 1995, c. 125, s. 1; town of Southern Shores: 1995, c. 70, s. 1; town of Sunset Beach: 1993, c. 381, s. 3; 1995, c. 124; 1995 (Reg. Sess., 1996), c. 732; 1997-63; town of Yadkinville: 1997-3, s. 1; Alamance-Caswell Area Mental Health, Developmental Disabilities and Substance Abuse Authority: 1987, c. 120; Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1.

§ 143-132. Minimum number of bids for public contracts.

Local Modification. — Alamance, and municipalities and local school administrative units within that county: 1999-93, s. 1; Beaufort, and municipalities and local school administrative units within that county: 1999-93, s. 1; Bertie: 1953, c. 1257; Camden, and municipalities and local school administrative units within that county: 1999-93, s. 1; Cherokee: 2007-48, s. 1; Clay: 2006-94, s. 1; Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1; Currituck, and municipalities and local school administrative units within that county: 1999-93, s. 1; Dare: 1999-40, s. 1; 2003-47, s. 1 (as to design and construction of administration building and renovation of Old Dare Court House, and expires July 1, 2008); Forsyth: 1993, c. 128, s. 1; Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; (As to water treatment and wastewater treatment plant expansion projects) Harnett: 2007-214, s. 1 (expires December 31, 2010); Iredell: (as to animal shelter project) 2008-67, s. 1 (expires July 1, 2010); Johnston: 2008-40 (as to contracts for renovations to the county courthouse); (As to contracts with Water and Sewer Authority) New Hanover: 2007-135, s. 1 (expires December 31, 2009); Northampton: 1953, c. 1257; Pasquotank and Perquimans, and municipalities and local school administrative units within those counties: 1999-93, s. 1; Stokes: 2006-50, s. 1; Surry: 1993 (Reg.Sess., 1994), c. 705. s. 1; Wilson: 1991, c. 200; city of Charlotte (as to water and wastewater treatment plants) 2007-312, s. 1; (as to speedway area infrastructure projects) city of Concord: 2008-7, s. 1 (expires December 31, 2013); city of Durham: 2001-350, s. 3; city of Elizabeth City: 2001-227, s. 1; city of Roanoke Rapids: 2001-245, s. 3; 2005-174, s. 2; (As to contracts with Water and Sewer Authority) city of Wilmington: 2007-135, s. 1 (expires December 31, 2009); town of Blowing Rock: 2006-171, s. 10 (public parking facility); town of Clayton: 1995, c. 125, s. 1; town of Louisburg: 2007-216, s. 3 (expires January 1, 2009); town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Southern Shores: 1995, c. 70, s. 1; town of Yadkinville: 1997-3, s. 1; Alamance-Caswell Area Mental Health, Development Disabilities and Substance Abuse Authority: 1987, c. 120; Charlotte/Mecklenburg Board of Education: 1999-207, ss. 3, 4; 2001-496, s. 10(c); Union County Public Schools Board of Education: 2007-90, ss. 2 and 3 (expires July 1, 2011); Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1; 2003-269, s. 1.

§ 143-135. Limitation of application of Article.

Local Modification. — Ashe: 1959, c. 627; Avery: 1995, c. 175, s. 1; Beaufort: 1955, c. 1136; Brunswick: 1961, c. 503; Catawba: 2004-35 (expires December 30, 2006); 2007-1 (as to construction of Catawba County Blackburn Landfill, effective June 1 2007, expires December 1, 2008); Davie: 2005-32, ss. 1, 2 (as to expansion and improvement of Emergency Medical Services Station Number One); Duplin: 1983 (Reg. Sess., 1984), c. 959; 1985, c. 124; Franklin: 1957, c. 288; Halifax: 1957, c. 803; Macon: 1983, c. 355; McDowell: 1959, c. 553; New Hanover Northeast Interceptor Sewer Force Main projects: 2007-135, s. 2 (expires December 31, 2009); Pender: 1955, c. 187; Union: 1985 (Reg. Sess., 1986), c. 914, s. 1; Watauga: 1993 (Reg. Sess., 1994), c. 667, s. 1; (as to Anne Marie Drive Park) 2005-197, s. 7; city of Asheboro: (as to Zoo City Park Project) 2008-55, s. 2(a) (expires December 31, 2010); city of Belmont: 1967, c. 419; city of Gastonia: 1967, c. 392; city of Goldsboro: 1991, c. 555, s. 10; city of Lumberton: 1983 (Reg. Sess., 1984), c. 950; city of Marion: 1959, c. 553; city of Monroe: 1985, c. 128; 2000-35, s. 1; city of Newtown: 2004-35 (expires Dec. 30, 2006); city of Wilmington Northeast Interceptor Sewer Force Main projects: 2007-135, s. 2 (expires December 31, 2009); city of Winston-Salem: (as to certain road and greenway projects) 2008-55, s. 1(a) (expires July 1, 2010); town of Boone: (as to Anne Marie Drive Park) 2005-197, s. 7; town of Booneville: 1993 (Reg. Sess., 1994), c. 667, s. 1; town of Chapel Hill: 2000-97, s. 1; town of Wake Forest: 2003-32 (as to use of qualified labor on electrical distribution feeder circuits project for which construction on the first phase begins no later than December 31, 2003 and construction on the final phase commences no later than December 31, 2009, and as to use of qualified labor on Electrical Substation project for which construction on the first phase begins no later than December 31, 2006); town of Wilkesboro: 2007-44, s. 1 (as to the construction of a water pump station and the extension of a waterline to serve a Department of Transportation rest center to be built outside the corporate limits, and to the replacement of five sewer interceptor lines that will be installed, expires December 30, 2009); city of Fayetteville Public Works Commission: 2006-48, s. 1 (expires January 1, 2012); Macon County School Administrative Unit: 1983, c. 355.

ARTICLE 8B.

State Building Commission.

§ 143-135.26. Powers and duties of the Commission.

Editor's Note. —

Session Laws 2008-107, s. 27.7A, provides: "The Department of Administration shall contract with North Carolina Freedom Monument Project, Inc., a nonprofit corporation, for the design and construction of the North Carolina Freedom Project. Notwithstanding G.S. 143-64.31 through 143-64.34 and G.S. 143-135.26, North Carolina Freedom Monument Project, Inc., shall select the designer and consultant for the project."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143-135.27. (Effective until October 1, 2011) Definition of capital improvement project.

As used in this Article, "State capital improvement project" means the construction of and any alteration, renovation, or addition to State buildings, as defined in G.S. 143-336, for which State funds, as defined in G.S. 143C-1-1, are used and which is required by G.S. 143-129 to be publicly advertised. "State capital improvement project" does not include a performance-based cleanup of environmental damage resulting from the discharge or release of a petroleum product from an underground storage tank pursuant to G.S. 143-215.94B(f) and G.S. 143-215.94D(f). (1987, c. 71, s. 1; 2001-442, s. 4; 2006-203, s. 87; 2008-195, s. 11.)

Section Set Out Twice. — The section above is effective until October 1, 2011. For the section as amended October 1, 2011, see the following section, also numbered G.S. 143-135.27.

Editor's Note. — Session Laws 2001-442, s. 8, provided that the amendment by Session Laws 2001-442, s. 4, which added the second sentence, would expire October 1, 2006. Session Laws 2008-195, s. 11, effective retroactively to October 1, 2006, amended Session Laws 2001-442, s. 8, to make the 2001 amendment expire October 1, 2011.

§ 143-135.27. (Effective October 1, 2011) Definition of capital improvement project.

As used in this Article, "State capital improvement project" means the construction of and any alteration, renovation, or addition to State buildings, as defined in G.S. 143-336, for which State funds, as defined in G.S. 143C-1-1, are used and which is required by G.S. 143-129 to be publicly advertised. (1987, c. 71, s. 1; 2001-442, s. 4; 2006-203, s. 87; 2008-195, s. 11.)

Section Set Out Twice. — The section above is effective October 1, 2011. For the section as in effect until October 1, 2011, see the preceding section, also numbered G.S. 143-135.27.

Editor's Note. — Session Laws 2001-442, s. 8, provided that the amendment by Session Laws 2001-442, s. 4, which added the second sentence, would expire October 1, 2006. Session Laws 2008-195, s. 11, effective retroactively to October 1, 2006, amended Session Laws 2001-442, s. 8, to make the 2001 amendment expire October 1, 2011. This section is set out above as it will appear following the expiration of the second sentence on October 1, 2011.

ARTICLE 8C.

Performance Standards for Sustainable, Energy-Efficient Public Buildings.

§ 143-135.35. Findings; legislative intent.

The General Assembly finds that public buildings can be built and renovated using sustainable, energy-efficient methods that save money, reduce negative environmental impacts, improve employee and student performance, and make employees and students more productive. The main objectives of sustainable, energy-efficient design are to avoid resource depletion of energy, water, and raw materials; prevent environmental degradation caused by facilities and infrastructure throughout their life cycle; and create buildings that are livable, comfortable, safe, and productive. It is the intent of the General Assembly that State-owned buildings and buildings of The University of North Carolina and the North Carolina Community College System be improved by establishing specific performance standards for sustainable, energy-efficient public buildings. These performance standards should be based upon recognized, consensus standards that are supported by science and have a demonstrated performance record. The General Assembly also intends, in order to ensure that the economic and environmental objectives of this Article are achieved, that State agencies, The University of North Carolina, and the North Carolina Community College System determine whether the performance standards are met for major facility construction and renovation projects, measure utility and maintenance costs, and verify whether these standards result in savings. Also, it is the intent of the General Assembly to establish a priority to use North Carolina-based resources, building materials, products, industries, manufacturers, and businesses to provide economic development to North Carolina and to meet the objectives of this Article. (2008-203, s. 1.)

Editor's Note. — Session Laws 2008-203, s. 7, made this Article effective August 8, 2008, and applicable to every major facility construction project, as defined in G.S. 143-135.36, and every major facility renovation project, as defined in G.S. 143-135.36, of a public agency, as defined in G.S. 143-135.36, that has not entered the schematic design phase prior to August 8, 2008.

§ 143-135.36. Definitions.

As used in this section, the following definitions apply unless the context requires otherwise:

(1) "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

(2) "Commission" means to document and to verify throughout the construction process whether the performance of a building, a component of a building, a system of a building, or a component of a building system meets specified objectives, criteria, and agency project requirements.

(3) "Department" means the Department of Administration.

(4) "Institutions of higher education" means the constituent institutions of The University of North Carolina, the regional institutions as defined in G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.

(5) "Major facility construction project" means a project to construct a building larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code adopted under Article 9 of Chapter 143 of the General Statutes. "Major facility construction project" does not include a project to construct a transmitter building or a pumping station.

(6) "Major facility renovation project" means a project to renovate a building when the cost of the project is greater than fifty percent (50%) of the insurance value of the building prior to the renovation and the renovated portion of the building is larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code. "Major facility renovation project" does not include a project to renovate a transmitter building or a pumping station. "Major facility renovation project" does not include a project to renovate a building having historic, architectural, or cultural significance under Part 4 of Article 2 of Chapter 143B of the General Statutes.

(7) "Public agency" means every State office, officer, board, department, and commission and institutions of higher education. (2008-203, s. 1.)

§ 143-135.37. Energy and water use standards for public major facility construction and renovation projects; verification and reporting of energy and water use.

(a) Program Established. — The Sustainable Energy-Efficient Buildings Program is established within the Department to be administered by the Department. This program applies to any major facility construction or renovation project of a public agency that is funded in whole or in part from an appropriation in the State capital budget or through a financing contract as defined in G.S. 142-82.

(b) Energy-Efficiency Standard. — For every major facility construction project of a public agency, the building shall be designed and constructed so that the calculated energy consumption is at least thirty percent (30%) less than the energy consumption for the same building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every major facility renovation project of a public agency, the renovated building shall be designed and constructed so that the calculated energy consumption is at least twenty percent (20%) less than the energy consumption for the same renovated building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is included in the ASHRAE 90.1-2004 standard.

(c) Water Use Standard. — For every major facility construction or renovation project of a public agency, the water system shall be designed and constructed so that the calculated indoor potable water use is at least twenty percent (20%) less than the indoor potable water use for the same building as calculated using the fixture performance requirements related to plumbing under the 2006 North Carolina State Building Code. For every major facility construction project of a public agency, the water system shall be designed and constructed so that the calculated sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for the same building as calculated using the performance requirements related to plumbing under the 2006 North Carolina State Building Code. For every major facility renovation project of a public agency, the Department shall determine on a project-by-project basis what reduced level of outdoor potable use or harvested stormwater use, if any, is a feasible requirement for the project, but the Department shall not require a greater reduction than is required under this subsection for a major facility construction project. To reduce the potable outdoor water use as required under this subsection, landscape materials that are water use efficient and irrigation strategies that include reuse and recycling of the water may be used.

(d) Performance Verification. — In order to be able to verify performance of a building component or an energy or water system component, the construction contract shall include provisions that require each building component and each energy and water system component to be commissioned, and these provisions shall be included at the earliest phase of the construction process as possible and in no case later than the schematic design phase of the project. Such commissioning shall continue through the initial operation of the building. The project design and construction teams and the public agency shall jointly determine what level of commissioning is appropriate for the size and complexity of the building or its energy and water system components.

(e) Separate Utility Meters. — In order to be able to monitor the initial cost and the continuing costs of the energy and water systems, a separate meter for each electricity, natural gas, fuel oil, and water utility shall be installed at each building undergoing a major facility construction or renovation project. Each meter shall be installed in accordance with the United States Department of Energy guidelines issued under section 103 of the Energy Policy Act of 2005 (Pub. L. 109-58, 119 Stat. 594 (2005)). Starting with the first month of facility operation, the public agency shall compare data obtained from each of these meters by month and by year with the applicable energy-efficiency standard under subsection (b) of this section and the applicable water use standard for the project under subsection (c) of this section and report annually no later than August 1 of each year to the Office of State Construction within the Department. If the average energy use or the average water use over the initial 12-month period of facility operation exceeds the applicable energy-efficiency standard under subsection (b) of this section or exceeds the applicable water use standard under subsection (c) of this section by fifteen percent (15%) or more, the public agency shall investigate the actual energy or water use, determine the cause of the discrepancy, and recommend corrections or modifications to meet the applicable standard. (2008-203, s. 1.)

Editor's Note. — Session Laws 2008-203, s. 4, provides: "The initial report under G.S. 143-135.37(e), the initial report under G.S. 143-135.39(f), and the initial report under G.S. 143-135.40 are due no later than August 1, 2009. The initial consolidated report required under G.S. 143-135.39(g) is due no later than October 1, 2009."

§ 143-135.38. Use of other standard when standard not practicable.

When the Department, public agency, and the design team determine that the energy-efficiency standard or the water use standard required under G.S. 143-135.37 is not practicable for a major facility construction or renovation project, then it must be determined by the State Building Commission if the standard is not practicable for the major facility construction or renovation project. If the State Building Commission determines the standard is not practicable for that project, the State Building Commission shall determine which standard is practicable for the design and construction for that major facility construction or renovation project. If a standard required under G.S. 143-135.37 is not followed for that project, the State Building Commission shall report this information and the reasons to the Department within 90 days of its determination. (2008-203, s. 1.)

§ 143-135.39. Guidelines for administering the Sustainable Energy-Efficient Buildings Program.

(a) Policies and Technical Guidelines. — The Department, in consultation with public agencies, shall develop and issue policies and technical guidelines to implement this Article for public agencies. The purpose of these policies and guidelines is to establish procedures and methods for complying with the energy-efficiency standard or the water use standard for major facility construction and renovation projects under G.S. 143-135.37.

(b) Preproposal Conference. — As provided in the request for proposals for construction services, the public agency may hold a preproposal conference for prospective bidders to discuss compliance with, and achievement of, the energy-efficiency standard or the water use standard required under G.S. 143-135.37 for prospective respondents.

(c) Advisory Committee. — The Department shall create a sustainable, energy-efficient buildings advisory committee comprised of representatives from the design and construction industry involved in public works contracting, personnel from the public agencies responsible for overseeing public works projects, and others at the Department's discretion to provide advice on implementing this Article. Among other duties, the advisory committee shall make recommendations regarding the education and training requirements under subsection (d) of this section, make recommendations regarding specific education and training criteria that are appropriate for the various roles with respect to, and levels of involvement in, a major facility construction or renovation project subject to this Article or the roles regarding the operation and maintenance of the facility, and make recommendations regarding developing a process whereby the Department receives ongoing evaluations and feedback to assist the Department in implementing this Article so as to effectuate the purpose of this Article. Further, the advisory committee may make recommendations to the Department regarding whether it is advisable to strengthen standards for energy efficiency or water use under this Article, whether it is advisable and feasible to add additional criteria to achieve greater sustainability in the construction and renovation of public buildings, or whether it is advisable and feasible to expand the scope of this Article to apply to additional types of publicly financed buildings or to smaller facility projects.

(d) Education and Training Requirements. — The Department shall review the advisory committee's recommendations under subsection (c) of this section regarding education and training. For each of the following, the Department shall develop education and training requirements that are consistent with the purpose of this Article and that are appropriate for the various roles with respect to, and level of involvement in, a major facility construction or renovation project or the roles regarding the operation and maintenance of the facility:

(1) The chief financial officers of public agencies.
(2) For each public agency that is responsible for the payment of the agency's utilities, the facility managers of these public agencies.
(3) The capital project coordinators of public agencies.
(4) Architects.
(5) Mechanical design engineers.

(e) Performance Review. — Annually the Department shall conduct a performance review of the Sustainable Energy-Efficient Buildings Program. The performance review shall include at least all of the following:

(1) Identification of the costs of implementing energy-efficiency and water use standards in the design and construction of major facility construction and renovation projects subject to this Article.
(2) Identification of operating savings attributable to the implementation of energy-efficiency and water use standards, including, but not limited to, savings in utility and maintenance costs.
(3) Identification of any impacts on employee productivity from using energy-efficiency and water use standards.
(4) Evaluation of the effectiveness of the energy-efficiency and water use standards established by this Article.
(5) Whether stricter standards or additional criteria for sustainable buildings should be used other than the standards under G.S. 143-135.37.
(6) Whether the Sustainable Energy-Efficient Buildings Program should be expanded to include additional public agencies, to include additional types of projects, or to include smaller major facility construction or renovation projects.
(7) Any recommendations for any other changes regarding sustainable, energy-efficient building standards that may be supported by the Department's findings.

(f) Report on Performance Review. — Each year, the Department shall include in its consolidated report under subsection (g) of this section a report of its findings under the performance review under subsection (e) of this section.

(g) Consolidated Report Required. — The Department shall consolidate the report required under subsection (f) of this section, the report under G.S. 143-135.37(e), the report, if any, from the State Building Commission under G.S. 143-135.38, and the report under G.S. 143-135.40 into one report. No later than October 1 of each year, this consolidated report shall be transmitted to the Chairs of the General Government Appropriations Subcommittees of both the Senate and the House of Representatives, the Environmental Review Commission, and the Joint Legislative Commission on Governmental Operations. The Department shall include any recommendations for administrative or legislative proposals that would better fulfill the legislative intent of this Article.

(h) Authority to Adopt Rules or Architectural or Engineering Standards. — The Department may adopt rules to implement this Article. The Department may adopt architectural or engineering standards as needed to implement this Article. (2008-203, s. 1.)

Editor's Note. — Session Laws 2008-203, s. 4, provides: "The initial report under G.S. 143-135.37(e), the initial report under G.S. 143-135.39(f), and the initial report under G.S. 143-135.40 are due no later than August 1, 2009. The initial consolidated report required under G.S. 143-135.39(g) is due no later than October 1, 2009."

§ 143-135.40. Monitor construction standards and sustainable building standards.

(a) The Department shall monitor the development of construction standards and sustainable building standards to determine whether there is any standard that the Department determines would better fulfill the intent of the Sustainable Energy-Efficient Buildings Program to achieve sustainable, energy-efficient public buildings than the standards under G.S. 143-135.37, and, if so, whether this Article should be amended to provide for the use of any different standards or the use of any additional standards to address additional aspects of sustainable, energy-efficient buildings. Additional standards monitored shall address consideration of site development, material and resource selection, and indoor environmental quality to enhance the health or productivity of building occupants. Also, the Department shall monitor the development of improved energy-efficiency standards developed by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, the ASHRAE standards, shall monitor whether the State Building Code Council adopts any other energy-efficiency standards for inclusion in the State Building Code that result in greater energy efficiency and increased energy savings in major facility construction and renovation projects under this Article, and shall monitor other standards for sustainable, energy-efficient buildings that are based upon recognized, consensus standards based on science and demonstrated performance.

(b) Each year, the Department shall report the results of its monitoring under this section, including any recommendations for administrative or legislative proposals. (2008-203, s. 1.)

Editor's Note. — Session Laws 2008-203, s. 4, provides: "The initial report under G.S. 143-135.37(e), the initial report under G.S. 143-135.39(f), and the initial report under G.S. 143-135.40 are due no later than August 1, 2009. The initial consolidated report required under G.S. 143-135.39(g) is due no later than October 1, 2009."

Article 9.

Building Code Council and Building Code.

§ 143-138. North Carolina State Building Code.

(a) Preparation and Adoption. — The Building Code Council may prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Before the adoption of the Code, or any part of the Code, the Council shall hold at least one public hearing. A notice of the public hearing shall be published in the North Carolina Register at least 15 days before the date of the hearing. Notwithstanding G.S. 150B-2(8a)h., the North Carolina State Building Code as adopted by the Building Code Council is a rule within the meaning of G.S. 150B-2(8a) and shall be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B of the General Statutes.

The Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), or that increases the cost of residential housing by eighty dollars ($80.00) or more per housing unit. The change can become effective only in accordance with G.S. 143-138(d). Neither the Department of Insurance nor the Council shall be required to expend any monies to pay for the preparation of any fiscal note under this section by any person outside of the Department or Council unless the Department or Council contracts with a third-party vendor to prepare the fiscal note.

(b) Contents of the Code. — The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel burning heater or appliance, fireplace, or an attached garage. Carbon monoxide detectors shall be those listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses. A "greenhouse" is a structure that has a glass or plastic roof, has one or more glass or plastic walls, has an area over ninety-five percent (95%) of which is used to grow or cultivate plants, is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual, and is not used for retail sales. Additional provisions addressing distinct life safety hazards shall be approved by the local building-rules jurisdiction.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices [the following:]

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Public Health which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of industrial machinery. However, if during the building code inspection process, an electrical inspector has any concerns about the electrical safety of a piece of industrial machinery, the electrical inspector may refer that concern to the Occupational Safety and Health Division in the North Carolina Department of Labor but shall not withhold the certificate of occupancy nor mandate third-party testing of the industrial machinery based solely on this concern. For the purposes of this paragraph, "industrial machinery" means equipment and machinery used in a system of operations for the explicit purpose of producing a product. The term does not include equipment that is permanently attached to or a component part of a building and related to general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements and may contain rules concerning energy efficiency that require all hot water plumbing pipes that are larger than one-fourth of an inch to be insulated.

No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily.

(c) Standards to Be Followed in Adopting the Code. — All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed reasonably to those ends. Requirements of the Code shall conform to good engineering practice. The Council may use as guidance, but is not required to adopt, the requirements of the International Building Code of the International Code Council, the Standard Building Code of the Southern Building Code Congress International, Inc., the Uniform Building Code of the International Conference of Building Officials, the National Building Code of the Building Officials and Code Administrators, Inc., the National Electric Code, the Life Safety Code, the National Fuel Gas Code, the Fire Prevention Code of the National Fire Protection Association, the Safety Code for Elevators and Escalators, and the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers, and standards promulgated by the American National Standards Institute, Standards Underwriters' Laboratories, Inc., and similar national or international agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety.

(d) Amendments of the Code. — The Building Code Council may revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code.

(e) Effect upon Local Codes. — The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. Approved rules shall become effective in accordance with G.S. 150B-21.3. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434.

(f) Repealed by Session Laws 1989, c. 681, s. 3.

(g) Publication and Distribution of Code. — The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1

OFFICIAL OR AGENCY	NUMBER OF COPIES
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1
Office of Juvenile Justice	1
Board of Transportation	1
Utilities Commission	1
Department of Administration	1
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Department of Cultural Resources [State Library]	1
Supreme Court Library	1
Legislative Library	1
Office of Administrative Hearings	1
Rules Review Commission	1
Schools	
All state-supported colleges and universities in the State of North Carolina*	1 each
Local Officials	
Clerks of the Superior Courts	1 each
Chief Building Inspector of each incorporated municipality or county	1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public. The proceeds from sales of the Building Code shall be credited to the Insurance Regulatory Fund under G.S. 58-6-25.

(h) Violations. — Any person who shall be adjudged to have violated this Article or the North Carolina State Building Code, except for violations of occupancy limits established by either, shall be guilty of a Class 3 misdemeanor and shall upon conviction only be liable to a fine, not to exceed fifty dollars ($50.00), for each offense. Each 30 days that such violation continues shall constitute a separate and distinct offense. Violation of occupancy limits established pursuant to the North Carolina State Building Code shall be a Class 3 misdemeanor. Any violation incurred more than one year after another conviction for violation of the occupancy limits shall be treated as a first offense for purposes of establishing and imposing penalties.

(i) Section 1008 of Chapter X of Volume 1 of the North Carolina State Building Code, Title "Special Safety to Life Requirements Applicable to Existing High-Rise Buildings" as adopted by the North Carolina State Building Code Council on March 9, 1976, as ratified and adopted as follows:

SECTION 1008-SPECIAL SAFETY TO LIFE REQUIREMENTS APPLICABLE TO EXISTING HIGH-RISE BUILDINGS

1008 — GENERAL.

(a) Applicability. — Within a reasonable time, as fixed by "written order" of the building official, and except as otherwise provided in subsection (j) of this section every building the [then] existing, that qualifies for classification under Table 1008.1 shall be considered to be a high-rise building and shall be provided with safety to life facilities as hereinafter specified. All other buildings shall be considered as low-rise. NOTE: The requirements of Section 1008 shall be considered as minimum requirements to provide for reasonable safety to life requirements for existing buildings and where possible, the owner and designer should consider the provisions of Section 506 applicable to new high-rise buildings.

(b) Notification of Building Owner. — The Department of Insurance will send copies of amendments adopted to all local building officials with the suggestion that all local building officials transmit to applicable building owners in their jurisdiction copies of adopted amendments, within six months from the date the amendments are adopted, with the request that each building owner respond to the local building official how he plans to comply with these requirements within a reasonable time.

NOTE: Suggested reasonable time and procedures for owners to respond to the building official's request is as follows:

(1) The building owner shall, upon receipt of written request from the building official on compliance procedures within a reasonable time, submit an overall plan required by 1008(c) below within one year and within the time period specified in the approved overall plan, but not to exceed five years after the overall plan is approved, accomplish compliance with this section, as evidenced by completion of the work in accordance with approved working drawings and specifications and by issuance of a new Certificate of Compliance by the building official covering the work. Upon approval of building owner's overall plan, the building official shall issue a "written order", as per 1008(a) above, to comply with Section 1008 in accordance with the approved overall plan.

(2) The building official may permit time extensions beyond five years to accomplish compliance in accordance with the overall plan when the owner can show just cause for such extension of time at the time the overall plan is approved.

(3) The local building official shall send second request notices as per 1008(b) to building owners who have made no response to the request at the end of six months and a third request notice to no response building owners at the end of nine months.

(4) If the building owner makes no response to any of the three requests for information on how the owner plans to comply with Section 1008 within 12 months from the first request, the building official shall issue a "written order" to the building owner to provide his building with the safety to life facilities as required by this section and to submit an overall plan specified by (1) above within six months with the five-year time period starting on the date of the "written order".

(5) For purposes of this section, the Construction Section of the Division of Health Service Regulation, Department of Health and Human Services, will notify all non-State owned I-Institutional buildings requiring licensure by the Division of Health Service Regulation and

coordinate compliance requirements with the Department of Insurance and the local building official.

(c) Submission of Plans and Time Schedule for Completing Work. — Plans and specifications, but not necessarily working drawings covering the work necessary to bring the building into compliance with this section shall be submitted to the building official within a reasonable time. (See suggested time in NOTE of Section 1008(b) above). A time schedule for accomplishing the work, including the preparation of working drawings and specifications shall be included. Some of the work may require longer periods of time to accomplish than others, and this shall be reflected in the plan and schedule.

NOTE: Suggested Time Period For Compliance:

SUGGESTED TIME PERIOD FOR COMPLIANCE

ITEM	CLASS I (SECTION)	CLASS II (SECTION)	CLASS III (SECTION)	TIME FOR COMPLETION
Signs in Elevator Lobbies and Elevator Cabs	1008.2(h)	1008.3(h)	1008.4(h)	180 days
Emergency Evacuation Plan	1008(b)	NOTE:		180 days
Corridor Smoke Detectors (Includes alternative door closers)	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Manual Fire Alarm	1008.2(a)	1008.3(a)	1008.4(a)	1 year
Voice Communication System Required	1008.2(b)	1008.3(b)	1008.4(b)	2 years
Smoke Detectors Required	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Protection and Fire Stopping for Vertical Shafts	1008.2(f)	1008.3(f)	1008.4(f)	3 years
Special Exit Requirements-Number, Location and Illumination to be in accordance with Section 1007	1008.2(e)	1008.3(e)	1008.4(e)	3 years
Emergency Electrical Power Supply	1008.2(d)	1008.3(d)	1008.4(d)	4 years
Special Exit Facilities Required	1008.2(e)	1008.3(e)	1008.4(e)	5 years
Compartmentation for Institutional Buildings	1008.2(f)	1008.3(f)	1008.4(f)	5 years
Emergency Elevator Requirements	1008.2(h)	1008.3(h)	1008.4(h)	5 years
Central Alarm Facility Required		1008.3(i)	1008.4(i)	5 years
Areas of Refuge Required on Every Eighth Floor			1008.4(j)	5 years
Smoke Venting			1008.4(k)	5 years
Fire Protection of Electrical Conductors			1008.4(l)	5 years
Sprinkler System Required			1008.4(m)	5 years

(d) Building Official Notification of Department of Insurance. — The building official shall send copies of written notices he sends to building owners to the Engineering and Building Codes Division for their files and also shall file

an annual report by August 15th of each year covering the past fiscal year setting forth the work accomplished under the provisions of this section.

(e) Construction Changes and Design of Life Safety Equipment. — Plans and specifications which contain construction changes and design of life safety equipment requirements to comply with provisions of this section shall be prepared by a registered architect in accordance with provisions of Chapter 83A of the General Statutes or by a registered engineer in accordance with provisions of Chapter 89C of the General Statutes or by both an architect and engineer particularly qualified by training and experience for the type of work involved. Such plans and specifications shall be submitted to the Engineering and Building Codes Division of the Department of Insurance for approval. Plans and specifications for I-Institutional buildings licensed by the Division of Health Service Regulation as noted in (b) above shall be submitted to the Construction Section of that Division for review and approval.

(f) Filing of Test Reports and Maintenance on Life Safety Equipment. — The engineer performing the design for the electrical and mechanical equipment, including sprinkler systems, must file the test results with the Engineering and Building Codes Division of the Department of Insurance, or to the agency designated by the Department of Insurance, that such systems have been tested to indicate that they function in accordance with the standards specified in this section and according to design criteria. These test results shall be a prerequisite for the Certificate of Compliance required by (b) above. Test results for I-Institutional shall be filed with the Construction Section, Division of Health Service Regulation. It shall be the duty and responsibility of the owners of Class I, II and III buildings to maintain smoke detection, fire detection, fire control, smoke removal and venting as required by this section and similar emergency systems in proper operating condition at all times. Certification of full tests and inspections of all emergency systems shall be provided by the owner annually to the fire department.

(g) Applicability of Chapter X and Conflicts with Other Sections. — The requirements of this section shall be in addition to those of Sections 1001 through 1007; and in case of conflict, the requirements affording the higher degree of safety to life shall apply, as determined by the building official.

(h) Classes of Buildings and Occupancy Classifications. — Buildings shall be classified as Class I, II or III according to Table 1008.1. In the case of mixed occupancies, for this purpose, the classification shall be the most restrictive one resulting from the application of the most prevalent occupancies to Table 1008.1.

FOOTNOTE: Emergency Plan. — Owners, operators, tenants, administrators or managers of high-rise buildings should consult with the fire authority having jurisdiction and establish procedures which shall include but not necessarily be limited to the following:

(1) Assignment of a responsible person to work with the fire authority in the establishment, implementation and maintenance of the emergency pre-fire plan.

(2) Emergency plan procedures shall be supplied to all tenants and shall be posted conspicuously in each hotel guest room, each office area, and each schoolroom.

(3) Submission to the local fire authority of an annual renewal or amended emergency plan.

(4) Plan should be completed as soon as possible.

1008.1 — ALL EXISTING BUILDINGS SHALL BE CLASSIFIED AS CLASS I, II AND III ACCORDING TO TABLE 1008.1.

TABLE 1008.1

Scope

CLASS	OCCUPANCY GROUP (3)(4)	OCCUPIED FLOOR ABOVE AVERAGE GRADE EXCEEDING HEIGHT (2)
CLASS I	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous Group I-Institutional-Restrained	60′ but less than 120′ above average grade or 6 but less than 12 stories above average grade.
	Group I-Institutional-Unrestrained	36′ but less than 60′ above average grade or 3 but less than 6 stories above average grade.
CLASS II	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous Group I-Institutional-Restrained	120′ but less than 250′ above average grade or 12 but less than 25 stories above average grade.
	Group I-Institutional-Unrestrained	60′ but less than 250′ above average grade or 6 but less than 25 stories above average grade.
CLASS III	Group R-Residential Group B-Business Group E-Educational Group I-Institutional Group A-Assembly Group H-Hazardous	250′ or 25 stories above average grade.

NOTE 1: The entire building shall comply with this section when the building has an occupied floor above the height specified, except that portions of the buildings which do not exceed the height specified are exempt from this section, subject to the following provisions:

(a) Low-rise portions of Class I buildings must be separated from high-rise portions by one-hour construction.

(b) Low-rise portions of Class II and III buildings must be separated from high-rise portions by two-hour construction.

(c) Any required exit from the high-rise portion which passes through the low-rise portions must be separated from the low-rise portion by the two-hour construction.

NOTE 2: The height described in Table 1008.1 shall be measured between the average grade outside the building and the finished floor of the top occupied story.

NOTE 3: Public parking decks meeting the requirements of Section 412.7 and less than 75 feet in height are exempt from the requirements of this section when there is no other occupancy above or below such deck.

NOTE 4: Special purpose equipment buildings, such as telephone equipment buildings housing the equipment only, with personnel occupant load limited to persons required to maintain the equipment may be exempt from any or all of these requirements at the discretion of the Engineering and Building Codes Division provided such special purpose equipment building is separated from other portions of the building by two-hour fire rated construction.

1008.2—REQUIREMENTS FOR EXISTING CLASS I BUILDINGS.

All Class I buildings shall be provided with the following:

(a) An approved manual fire alarm system, meeting the requirements of Section 1125 and applicable portions of NFPA 71, 72A, 72B, 72C or 72D, shall be provided unless the building is fully sprinklered or equipped with an approved automatic fire detection system connected to the fire department.

(b) All Class I buildings shall meet the requirements of Sections 1001-1007.

(c) Smoke Detectors Required. — At least one approved listed smoke detector tested in accordance with UL-167, capable of detecting visible and invisible particles of combustion shall be installed as follows:

(1) All buildings classified as institutional, residential and assembly occupancies shall be provided with listed smoke detectors in all required exit corridors spaced no further than 60′ on center or more than 15′ from any wall. Exterior corridors open to the outside are not required to comply with this requirement. If the corridor walls have one-hour fire resistance rating with all openings protected with 1-3/4 inch solid wood core or hollow metal door or equivalent and all corridor doors are equipped with approved self-closing devices, the smoke detectors in the corridor may be omitted. Detectors in corridors may be omitted when each dwelling unit is equipped with smoke detectors which activate the alarm system.

(2) In every mechanical equipment, boiler, electrical equipment, elevator equipment or similar room unless the room is sprinklered or the room is separated from other areas by two-hour fire resistance construction with all openings therein protected with approved fire dampers and Class B fire doors. (Approved listed fire (heat) detectors may be submitted for these rooms.)

(3) In the return air portion of every air conditioning and mechanical ventilation system that serves more than one floor.

(4) The activation of any detector shall activate the alarm system, and shall cause such other operations as required by this Code.

(5) The annunciator shall be located near the main entrance or in a central alarm and control facility.

NOTE 1: Limited area sprinklers may be supplied from the domestic water system provided the domestic water system is designed to support the design flow of the largest number of sprinklers in any one of the enclosed areas. When supplied by the domestic water system, the maximum number of sprinklers in any one enclosed room or area shall not exceed 20 sprinklers which must totally protect the room or area.

(d) Emergency Electrical Power Supply. — An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above.

(1) Emergency, exit and elevator cab lighting.

(2) Emergency illumination for corridors, stairs, etc.

(3) Emergency Alarms and Detection Systems. — Power supply for fire alarm and fire detection. Emergency power does not need to be connected to fire alarm or detection systems when they are equipped with their own emergency power supply from float or trickle charge battery in accordance with NFPA standards.

(e) Special Exit Requirements. — Exits and exitways shall meet the following requirements:

(1) Protection of Stairways Required. — All required exit stairways shall be enclosed with noncombustible one-hour fire rated construction with a minimum of 1¾ inch solid core wood door or hollow metal door

or 20 minute UL listed doors as entrance thereto. (See Section 1007.5).

(2) Number and Location of Exits. — All required exit stairways shall meet the requirements of Section 1007 to provide for proper number and location and proper fire rated enclosures and illumination of and designation for means of egress.

(3) Exit Outlets. — Each required exit stair shall exit directly outside or through a separate one-hour fire rated corridor with no openings except the necessary openings to exit into the fire rated corridor and from the fire rated corridor and such openings shall be protected with 1¾ inch solid wood core or hollow metal door or equivalent unless the exit floor level and all floors below are equipped with an approved automatic sprinkler system meeting the requirements of NFPA No. 13.

(f) Smoke Compartments Required for I-Institutional Buildings. — Each occupied floor shall be divided into at least two compartments with each compartment containing not more than 30 institutional occupants. Such compartments shall be subdivided with one-half hour fire rated partitions which shall extend from outside wall to outside wall and from floor to and through any concealed space to the floor slab or roof above and meet the following requirements:

(1) Maximum area of any smoke compartment shall be not more than 22,500 square feet in area with both length and width limited to 150 feet.

(2) At least one smoke partition per floor regardless of building size forming two smoke zones of approximately equal size.

(3) All doors located in smoke partitions shall be properly gasketed to insure a substantial barrier to the passage of smoke and gases.

(4) All doors located in smoke partitions shall be no less than 1¾ inch thick solid core wood doors with UL, ¼ inch wire glass panel in metal frames. This glass panel shall be a minimum of 100 square inches and a maximum of 720 square inches.

(5) Every door located in a smoke partition shall be equipped with an automatic closer. Doors that are normally held in the open position shall be equipped with an electrical device that shall, upon actuation of the fire alarm or smoke detection system in an adjacent zone, close the doors in that smoke partition.

(6) Glass in all corridor walls shall be ¼″, UL approved, wire glass in metal frames in pieces not to exceed 1296 square inches.

(7) Doors to all patient rooms and treatment areas shall be a minimum of 1¾ inch solid core wood doors except in fully sprinklered buildings.

(g) Protection and Fire Stopping for Vertical Shafts. — All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible one-hour fire rated construction with shaft wall openings protected with 1¾ inch solid core wood door or hollow metal door. Vertical shafts (such as electrical wiring shafts) which have openings such as ventilated doors on each floor must be fire stopped at the floor slab level with noncombustible materials having a fire resistance rating not less than one hour to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shafts.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall openings do not need any additional protection.

(h) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call

button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. The required emergency sign shall be readable at all times and shall be a minimum of 1/2″ high block letters with the words: "IN CASE OF FIRE DO NOT USE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

1008.3 — REQUIREMENTS FOR EXISTING CLASS II BUILDINGS.

All Class II buildings must meet the following requirements:

(a) Manual Fire Alarm. — Provide manual fire alarm system in accordance with Section 1008.2(a). In addition, buildings so equipped with sprinkler alarm system or automatic fire detection system must have at least one manual fire alarm station near an exit on each floor as a part of such sprinkler or automatic fire detection and alarm system. Such manual fire alarm systems shall report a fire by floor.

(b) Voice Communication System Required. — An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. — A one-way voice communication system shall be established on a selective basis which can be heard clearly by all occupants in all exit stairways, elevators, elevator lobbies, corridors, assembly rooms and tenant spaces.

NOTE 1: This system shall function so that in the event of one circuit or speaker being damaged or out of service, the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(c) Smoke Detectors Required. — Smoke detectors are required as per Section 1008.2(c). The following are additional requirements:

(1) Storage rooms larger than 24 square feet or having a maximum dimension of over eight feet shall be provided with approved fire detectors or smoke detectors installed in an approved manner unless the room is sprinklered.

(2) The actuation of any detectors shall activate the fire alarm system.

(d) Emergency Electrical Power Supply. — An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above. Power supply shall furnish power for items listed in Section 1008.2(d) and the following:

(1) Pressurization Fans. — Fans to provide required pressurization, smoke venting or smoke control for stairways.

(2) Elevators. — The designated emergency elevator.

(e) Special Exit Facilities Required. — The following exit facilities are required:

(1) The special exit facilities required in 1008.2(e) are required. All required exit stairways shall be enclosed with noncombustible two-hour fire rated construction with a minimum of 1½ hour Class B-labeled doors as entrance thereto: (See Section 1007.5).

(2) Smoke-Free Stairways Required. — At least one stairway shall be a smoke free stairway in accordance with Section 1104.2 or at least one stairway shall be pressurized to between 0.15 inch and 0.35 inch water column pressure with all doors closed. Smoke-free stairs and pressurized stairs shall be identified with signs containing letters a minimum of ½ inch high containing the words "PRIMARY EXIT

STAIRS" unless all stairs are smoke free or pressurized. Approved exterior stairways meeting the requirements of Chapter XI or approved existing fire escapes meeting the requirements of Chapter X with all openings within 10 feet protected with wire glass or other properly designed stairs protected to assure similar smoke-free vertical egress may be permitted. All required exit stairways shall also meet the requirements of Section 1008.2(e).

(3) If stairway doors are locked from the stairway side, keys shall be provided to unlock all stairway doors on every eighth floor leading into the remainder of the building and the key shall be located in a glass enclosure adjacent to the door at each floor level (which may sound an alarm when the glass is broken). When the key unlocks the door, the hardware shall be of the type that remains unlocked after the key is removed. Other means, approved by the building official may be approved to enable occupants and fire fighters to readily unlock stairway doors on every eighth floor that may be locked from the stairwell side. The requirements of this section may be eliminated in smoke-free stairs and pressurized stairs provided fire department access keys are provided in locations acceptable to the local fire authority.

(f) Compartmentation for I-Institutional Buildings Required. — See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. — All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible two-hour fire rated construction with Class B-labeled door except for elevator doors which shall be hollow metal or equivalent. All vertical shafts which are not so enclosed must be fire stopped at each floor slab with noncombustible materials having a fire resistance rating of not less than two hours to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shaft.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall opening do not need any additional protection.

(h) Emergency Elevator Requirements.

(1) Elevator Recall. — Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby, or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.

NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(2) Identification of Emergency Elevator. — At least one elevator shall be identified as the emergency elevator and shall serve all floor levels.

NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(3) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and shall be a minimum of ½ inch high block letters with the words: "IN CASE OF

FIRE DO NOT USE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

(i) Central Alarm Facility Required. — A central alarm facility accessible at all times to fire department personnel or attended 24 hours a day, shall be provided and shall contain the following:

(1) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(2) Public service telephone.

(3) Fire detection and alarm systems annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received. These signals shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(4) Master keys for access from all stairways to all floors.

(5) One-way voice emergency communications system controls.

1008.4 — REQUIREMENTS FOR EXISTING CLASS III BUILDINGS.

All Class III Buildings shall be provided with the following:

(a) Manual Fire Alarm System. — A manual fire alarm system meeting the requirements of Section 1008.3(a).

(b) Voice Communication System Required. — An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. — A one-way voice communication system shall be established on a selective or general basis which can be heard clearly by all occupants in all elevators, elevator lobbies, corridors, and rooms or tenant spaces exceeding 1,000 sq. ft. in area.

NOTE 1: This system shall be designed so that in the event of one circuit or speaker being damaged or out of service the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(2) Two-way system for use by both fire fighters and occupants at every fifth level in stairways and in all elevators.

(3) Within the stairs at levels not equipped with two-way voice communications, signs indicating the location of the nearest two-way device shall be provided.

NOTE: The one-way and two-way voice communication systems may be combined.

(c) Smoke Detectors Required. — Approved listed smoke detectors shall be installed in accordance with Section 1008.3(c) and in addition, such detectors shall terminate at the central alarm and control facility and be so designed that it will indicate the fire floor or the zone on the fire floor.

(d) Emergency Electrical Power Supply. — Emergency electrical power supply meeting the requirements of Section 1008.3(d) to supply all emergency equipment required by Section 1008.3(d) shall be provided and in addition, provisions shall be made for automatic transfer to emergency power in not more than ten seconds for emergency illumination, emergency lighting and emergency communication systems. Provisions shall be provided to transfer power to a second designated elevator located in a separate shaft from the primary emergency elevator. Any standpipe or sprinkler system serving occupied floor areas 400 feet or more above grade shall be provided with on-site generated power or diesel driven pump.

(e) Special Exit Requirements. — All exits and exitways shall meet the requirements of Section 1008.3(e).

(f) Compartmentation of Institutional Buildings Required. — See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. — Same as Class II buildings. See Section 1008.3(g).

(h) Emergency Elevator Requirements.

(1) Primary Emergency Elevator. — At least one elevator serving all floors shall be identified as the emergency elevator with identification signs both outside and inside the elevator and shall be provided with emergency power to meet the requirements of Section 1008.3(c).
NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(2) Elevator Recall. — Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.
NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(3) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and have a minimum of ½″ high block letters with the words: "IN CASE OF FIRE, UNLESS OTHERWISE INSTRUCTED, DO NOT USE THE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

(4) Machine Room Protection. — When elevator equipment located above the hoistway is subject to damage from smoke particulate matter, cable slots entering the machine room shall be sleeved beneath the machine room floor to inhibit the passage of smoke into the machine room.

(5) Secondary Emergency Elevator. — At least one elevator located in separate shaft from the Primary Emergency Elevator shall be identified as the "Secondary Emergency Elevator" with identification signs both outside and inside the elevator. It will serve all occupied floors above 250 feet and shall have all the same facilities as the primary elevator and will be capable of being transferred to the emergency power system.
NOTE: Emergency power supply can be sized for nonsimultaneous use of the primary and secondary emergency elevators.

(i) Central Alarm and Control Facilities Required.

(1) A central alarm facility accessible at all times to Fire Department personnel or attended 24 hours a day, shall be provided. The facility shall be located on a completely sprinklered floor or shall be enclosed in two-hour fire resistive construction. Openings are permitted if protected by listed 1½ hour Class B-labeled closures or water curtain devices capable of a minimum discharge of three gpm per lineal foot of opening. The facility shall contain the following:

(i) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(ii) Public service telephone.
(iii) Direct communication to the control facility.
(iv) Controls for the voice communication systems.
(v) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received, those signals, shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(2) A control facility (fire department command station) shall be provided at or near the fire department response point and shall contain the following:
(i) Elevator status indicator.
NOTE: Not required in buildings where there is a status indicator at the main elevator lobby.
(ii) Master keys for access from all stairways to all floors.
(iii) Controls for the two-way communication system.
(iv) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received.
(v) Direct communication to the central alarm facility.

(3) The central alarm and control facilities may be combined in a single approved location. If combined, the duplication of facilities and the direct communication system between the two may be deleted.

(j) Areas of Refuge Required. — Class III buildings shall be provided with a designated "area of refuge" at the 250 ft. level and on at least every eighth floor or fraction thereof above that level to be designed so that occupants above the 250 ft. level can enter at all times and be safely accommodated in floor areas meeting the following requirements unless the building is completely sprinklered:

(1) Identification and Size. — These areas of refuge shall be identified on the plans and in the building as necessary. The area of refuge shall provide not less than 3 sq. ft. per occupant for the total number of occupants served by the area based on the occupancy content calculated by Section 1105. A minimum of two percent (2%) of the number of occupants on each floor shall be assumed to be handicapped and no less than 16 sq. ft. per handicapped occupant shall be provided. Smoke proof stairways meeting the requirements of Section 1104.2 and pressurized stairways meeting the requirements of Section 1108.3(e)(2) may be used for ambulatory occupants at the rate of 3 sq. ft. of area of treads and landings per person, but in no case shall the stairs count for more than one-third of the total occupants. Doors leading to designated areas of refuge from stairways or other areas of the building shall not have locking hardware or shall be automatically unlocked upon receipt of any manual or automatic fire alarm signal.

(2) Pressurized. — The area of refuge shall be pressurized with 100% fresh air utilizing the maximum capacity of existing mechanical building air conditioning system without recirculation from other areas or other acceptable means of providing fresh air into the area.

(3) Fire Resistive Separation. — Walls, partitions, floor assemblies and roof assemblies separating the area of refuge from the remainder of the building shall be noncombustible and have a fire resistance rating of not less than one hour. Duct penetrations shall be protected as required for penetrations of shafts. Metallic piping and metallic conduit may penetrate or pass through the separation only if the openings around the piping or conduit are sealed on each side of the

penetrations with impervious noncombustible materials to prevent the transfer of smoke or combustion gases from one side of the separation to the other. The fire door serving as a horizontal exit between compartments shall be so installed, fitted and gasketed to provide a barrier to the passage of smoke.

(4) Access Corridors. — Any corridor leading to each designated area of refuge shall be protected as required by Sections 1104 and 702. The capacity of an access corridor leading to an area of refuge shall be based on 150 persons per unit width as defined in Section 1105.2. An access corridor may not be less than 44 inches in width. The width shall be determined by the occupant content of the most densely populated floor served. Corridors with one-hour fire resistive separation may be utilized for area of refuge at the rate of three sq. ft. per ambulatory occupant provided a minimum of one cubic ft. per minute of outside air per square foot of floor area is introduced by the air conditioning system.

(5) Penetrations. — The continuity of the fire resistance at the juncture of exterior walls and floors must be maintained.

(k) Smoke Venting. — Smoke venting shall be accomplished by one of the following methods in nonsprinklered buildings:

(1) In a nonsprinklered building, the heating, ventilating and air conditioning system shall be arranged to exhaust the floor of alarm origin at its maximum exhausting capacity without recirculating air from the floor of alarm origin to any other floor. The system may be arranged to accomplish this either automatically or manually. If the air conditioning system is also used to pressurize the areas of refuge, this function shall not be compromised by using the system for smoke removal.

(2) Venting facilities shall be provided at the rate of 20 square feet per 100 lineal feet or 10 square feet per 50 lineal feet of exterior wall in each story and distributed around the perimeter at not more than 50 or 100 foot intervals openable from within the fire floor. Such panels and their controls shall be clearly identified.

(3) Any combination of the above two methods or other approved designs which will produce equivalent results and which is acceptable to the building official.

(l) Fire Protection of Electrical Conductors. — New electrical conductors furnishing power for pressurization fans for stairways, power for emergency elevators and fire pumps required by Section 1008.4(d) shall be protected by a two-hour fire rated horizontal or vertical enclosure or structural element which does not contain any combustible materials. Such protection shall begin at the source of the electrical power and extend to the floor level on which the emergency equipment is located. It shall also extend to the emergency equipment to the extent that the construction of the building components on that floor permits. New electrical conductors in metal raceways located within a two-hour fire rated assembly without any combustible therein are exempt from this requirement.

(m) Automatic Sprinkler Systems Required.

(1) All areas which are classified as Group M-mercantile and Group H-hazardous shall be completely protected with an automatic sprinkler system.

(2) All areas used for commercial or institutional food preparation and storage facilities adjacent thereto shall be provided with an automatic sprinkler system.

(3) An area used for storage or handling of hazardous substances shall be provided with an automatic sprinkler system.

(4) All laboratories and vocational shops in Group E, Educational shall be provided with an automatic sprinkler system.

(5) Sprinkler systems shall be in strict accordance with NFPA No. 13 and the following requirements:
The sprinkler system must be equipped with a water flow and supervisory signal system that will transmit automatically a water flow signal directly to the fire department or to an independent signal monitoring service satisfactory to the fire department.

(j) Subsection (i) of this section does not apply to business occupancy buildings as defined in the North Carolina State Building Code except that evacuation plans as required on page 8, lines 2 through 16 [Section 1008, footnote following subsection (h)], and smoke detectors as required for Class I Buildings as required by Section 1008.2, page 11, lines 5 through 21 [Section 1008.2, subdivision (c)(1)]; Class II Buildings as required by Section 1008.3, page 17, lines 17 through 28 and page 18, lines 1 through 10 [Section 1008.3, subsections (c) and (d)]; and Class III Buildings, as required by Section 1008.4, lines 21 through 25 [Section 1008.4, subsection (c)] shall not be exempted from operation of this act as applied to business occupancy buildings, except that the Council shall adopt rules that allow a business occupancy building built prior to 1953 to have a single exit to remain if the building complies with the Building Code on or before December 31, 2006.

(j1) A nonbusiness occupancy building built prior to the adoption of the 1953 Building Code that is not in compliance with Section 402.1.3.5 of Volume IX of the Building Code or Section 3407.2.2 of Volume I of the Building Code must comply with the applicable sections by December 31, 2006.

(k) For purposes of use in the Code, the term "Family Care Home" shall mean an adult care home having two to six residents.

(*l*) When any question arises as to any provision of the Code, judicial notice shall be taken of that provision of the Code. (1957, c. 1138; 1969, c. 567; c. 1229, ss. 2-6; 1971, c. 1100, ss. 1, 2; 1973, c. 476, ss. 84, 128, 138, 152; c. 507, s. 5; 1981, c. 677, s. 3; c. 713, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1282, s. 20.2D; c. 1348, s. 1; 1983, c. 614, s. 3; 1985, c. 576, s. 1; c. 622, s. 2; c. 666, s. 39; 1989, c. 25, s. 2; c. 681, ss. 2, 3, 9, 10, 18, 19; c. 727, ss. 157, 158; 1991 (Reg. Sess., 1992), c. 895, s. 1; 1993, c. 329, ss. 1, 3; c. 539, s. 1009; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 111, s. 1; c. 242, s. 1; c. 507, s. 27.8(r); c. 535, s. 30; 1997-26, ss. 1-3, 5; 1997-443, ss. 11A.93, 11A.94, 11A.118(a), 11A.119(a); 1998-57, s. 2; 1998-172, s. 1; 1998-202, s. 4(u); 1999-456, s. 40; 2000-137, s. 4(x); 2000-140, s. 93.1(a); 2001-141, ss. 1, 2, 3, 4; 2001-421, ss. 1.1, 1.2, 1.5; 2001-424, s. 12.2(b); 2002-144, s. 5; 2003-221, s. 6; 2003-284, s. 22.2; 2004-124, ss. 21.1, 21.2; 2005-205, s. 6; 2007-182, ss. 1, 2; 2007-529, s. 1; 2007-542, s. 1; 2008-176, s. 2; 2008-219, s. 1.)

Editor's Note. —

Session Laws 2008-65, s. 1, effective September 1, 2008, repealed Session Laws 1983, c. 614, s. 5, which had provided that the amendments by the 1983 act would not apply to Wilson, Nash and Edgecombe Counties.

Session Laws 2008-219, s. 5, provides: "The amendment to G.S. 143-138(b) contained in Section 1 of this act shall not be construed to imply that the Building Code Council does not possess the authority contained in that amendment prior to the effective date of Section 1 of this act [August 16, 2008]."

Session Laws 2008-219, s. 7, provides: "The Building Code Council shall study the needs and benefits of carbon monoxide detectors as set forth in provisions in Section 1 of this act and report the results of its study to the General Assembly on or before July 1, 2009."

Effect of Amendments. —

Session Laws 2008-176, s. 2, effective August 4, 2008, rewrote the fifth paragraph of subsection (b).

Session Laws 2008-219, s. 1, effective August 16, 2008, added the third paragraph in subsection (b).

ARTICLE 9A.

North Carolina Manufactured Housing Board — Manufactured Home Warranties.

Part 1. Duties, Warranties, Purchase Transaction.

§ 143-143.9. Definitions.

CASE NOTES

Standing to Bring Action as "Buyer." — Daughter had standing to maintain an unfair and deceptive trade practices claim under G.S. 75-16, 143-143.12(c), and 143-143.9(2) against a manufacturer as: (1) her father bought her a defective mobile home, (2) she was the person who selected the interior details for the home, who planned to live in the home, and who was going to make the monthly installment payments, (3) she was a consumer of the mobile home supplied by a manufacturer, and (4) when the manufacturer supplied a defective home, the daughter suffered a resulting injury. Walker v. Fleetwood Homes of N.C., Inc., 362 N.C. 63, 653 S.E.2d 393, 2007 N.C. LEXIS 1232 (2007).

§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings.

CASE NOTES

Unfair and Deceptive Trade Practices. — While a violation of G.S. 143-143.10 and G.S. 143-143.13 may be a violation of G.S. 75-1.1, it is not automatically an unfair and deceptive trade practice, and a violation of 11 N.C. Admin. Code 8.0907, which is based on these statutes, is not necessarily an unfair and deceptive trade practice as a matter of law; however, a manufacturer's violations of the regulation are potentially relevant to a claim under G.S. 75-1.1. Walker v. Fleetwood Homes of N.C., Inc., 362 N.C. 63, 653 S.E.2d 393, 2007 N.C. LEXIS 1232 (2007).

Manufacturer's violations of 11 N.C. Admin. Code 8.0907, which was based on G.S. 143-143.10 and G.S. 143-143.13, were not per se an unfair and deceptive trade practice under G.S. 75-1.1, although the violations of 11 N.C. Admin. Code 8.0907 were evidence of an unfair and deceptive trade practice. Walker v. Fleetwood Homes of N.C., Inc., 362 N.C. 63, 653 S.E.2d 393, 2007 N.C. LEXIS 1232 (2007).

§ 143-143.11. License required; application for license.

CASE NOTES

Cited in Walker v. Fleetwood Homes of N.C., Inc., 362 N.C. 63, 653 S.E.2d 393, 2007 N.C. LEXIS 1232 (2007).

§ 143-143.12. Bond required.

CASE NOTES

Standing to Bring Action Under Subsection (c). — Daughter had standing to maintain an unfair and deceptive trade practices claim under G.S. 75-16, 143-143.12(c), and 143-143.9(2) against a manufacturer as: (1) her father bought her a defective mobile home, (2) she was the person who selected the interior details for the home, who planned to live in the home, and who was going to make the monthly installment payments, (3) she was a consumer of the mobile home supplied by a manufacturer, and (4) when the manufacturer supplied a defective home, the daughter suffered a resulting injury. Walker v. Fleetwood Homes of N.C., Inc., 362 N.C. 63, 653 S.E.2d 393, 2007 N.C. LEXIS 1232 (2007).

§ 143-143.13. Grounds for denying, suspending, or revoking licenses; civil penalties.

CASE NOTES

Unfair and Deceptive Trade Practices. — Manufacturer's violations of 11 N.C. Admin. Code 8.0907, which was based on G.S. 143-143.10 and G.S. 143-143.13, were not per se an unfair and deceptive trade practice under G.S. 75-1.1, although the violations of 11 N.C. Admin. Code 8.0907 were evidence of an unfair and deceptive trade practice. Walker v. Fleetwood Homes of N.C., Inc., 362 N.C. 63, 653 S.E.2d 393, 2007 N.C. LEXIS 1232 (2007).

While a violation of G.S. 143-143.10 and G.S. 143-143.13 may be a violation of G.S. 75-1.1, it is not automatically an unfair and deceptive trade practice, and a violation of 11 N.C. Admin. Code 8.0907, which is based on these statutes, is not necessarily an unfair and deceptive trade practice as a matter of law; however, a manufacturer's violations of the regulation are potentially relevant to a claim under G.S. 75-1.1. Walker v. Fleetwood Homes of N.C., Inc., 362 N.C. 63, 653 S.E.2d 393, 2007 N.C. LEXIS 1232 (2007).

ARTICLE 9C.

North Carolina Code Officials Qualification Board.

§ 143-151.13. Required standards and certificates for Code-enforcement officials.

(a) No person shall engage in Code enforcement under this Article unless that person possesses one of the following types of certificates, currently valid, issued by the Board attesting to that person's qualifications to engage in Code enforcement: (i) a standard certificate; (ii) a limited certificate provided for in subsection (c) of this section; or (iii) a probationary certificate provided for in subsection (d) of this section. To obtain a standard certificate, a person must pass an examination, as prescribed by the Board or by a contracting party under G.S. 143-151.16(d), that is based on the North Carolina State Building Code and administrative procedures required for Code enforcement. The Board may issue a standard certificate of qualification to each person who successfully completes the examination. The certificate authorizes that person to engage in Code enforcement and to practice as a qualified Code-enforcement official in North Carolina. The certificate of qualification shall bear the signatures of the chairman and secretary of the Board.

(b) The Board shall issue one or more standard certificates to each Code-enforcement official demonstrating the qualifications set forth in subsection (b1) of this section. Standard certificates are available for each of the following types of qualified Code-enforcement officials:

(1) Building inspector.
(2) Electrical inspector.
(3) Mechanical inspector.
(4) Plumbing inspector.
(5) Fire inspector.

(b1) The holder of a standard certificate may practice Code enforcement only within the inspection area and level described upon the certificate issued by the Board. A Code-enforcement official may qualify and hold one or more certificates. These certificates may be for different levels in different types of positions as defined in this section and in rules adopted by the Board.

(b2) A Code-enforcement official holding a certificate indicating a specified level of proficiency in a particular type of position may hold a position calling for that type of qualification anywhere in the State. With respect to all types of Code-enforcement officials, those with Level I, Level II, or Level III certificates shall be qualified to inspect and approve only those types and sizes of buildings as specified in rules adopted by the Board.

(c) A Code-enforcement official holding office as of the date specified in this subsection for the county or municipality by which he is employed, shall not be required to possess a standard certificate as a condition of tenure or continued employment but shall be required to complete such in-service training as may be prescribed by the Board. At the earliest practicable date, such official shall receive from the Board a limited certificate qualifying him to engage in Code enforcement at the level, in the particular type of position, and within the governmental jurisdiction in which he is employed. The limited certificate shall be valid only as an authorization for the official to continue in the position he held on the applicable date and shall become invalid if he does not complete in-service training within two years following the applicable date in the schedule below, according to the governmental jurisdiction's population as published in the 1970 U.S. Census:

Counties and Municipalities over 75,000 population — July 1, 1979
Counties and Municipalities between 50,001 and 75,000 — July 1, 1981
Counties and Municipalities between 25,001 and 50,000 — July 1, 1983
Counties and Municipalities 25,000 and under — July 1, 1985
All fire prevention inspectors holding office — July 1, 1989. Fire prevention inspectors have until July 1, 1993, to complete in-service training.

An official holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position.

(d) The Board may provide for the issuance of probationary or temporary certificates valid for such period (not less than one year nor more than three years) as specified by the Board's rules, or until June 30, 1983, whichever is later, to any Code-enforcement official newly employed or newly promoted who lacks the qualifications prescribed by the Board as prerequisite to applying for a standard certificate under subsection (a). No official may have a probationary or temporary certificate extended beyond the specified period by renewal or otherwise. The Board may provide for appropriate levels of probationary or temporary certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the Board may deem necessary to protect the public safety and health.

(e) The Board shall, without requiring an examination, issue a standard certificate to any person who is currently certified as a county electrical inspector pursuant to G.S. 153A-351. The certificate issued by the Board shall authorize the person to serve at the electrical inspector level approved by the Commissioner of Insurance in G.S. 153A-351.

(f) The Board shall issue a standard certificate to any person who is currently licensed to practice as a(n):

(1) Architect, registered pursuant to Chapter 83A;
(2) General contractor, licensed pursuant to Article 1 of Chapter 87;
(3) Plumbing or heating contractor, licensed pursuant to Article 2 of Chapter 87;
(4) Electrical contractor, licensed pursuant to Article 4 of Chapter 87; or,
(5) Professional engineer, registered pursuant to Chapter 89C;

provided the person successfully completes a short course, as prescribed by the Board, relating to the State Building Code regulations and Code-enforcement administration. The standard certificate shall authorize the person to practice as a qualified Code-enforcement official in a particular type of position at the level determined by the Board, based on the type of license or registration held in any profession specified above. (1977, c. 531, s. 1; 1979, cc. 521, 829; 1983, c. 90; 1987, c. 827, ss. 225, 227; 1989, c. 681, s. 17; 1989 (Reg. Sess., 1990), c. 1021, s. 5; 1991, c. 133, s. 1; 2007-120, s. 1; 2008-124, s. 8.1.)

Editor's Note. —
Session Laws 2008-124, s. 11.1 is a severability clause.

Effect of Amendments. —
Session Laws 2008-124, s. 8.1, effective July 28, 2008, rewrote subsection (a).

§ 143-151.16. Certification fees; renewal of certificates; examination fees.

(a) The Board shall establish a schedule of fees to be paid by each applicant for certification as a qualified Code-enforcement official. Such fee shall not exceed twenty dollars ($20.00) for each applicant.

(b) A certificate, other than a probationary certificate, as a qualified Code-enforcement official issued pursuant to the provisions of this Article must be renewed annually on or before the first day of July. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ten dollars ($10.00). The Board is authorized to charge an extra two dollar ($2.00) late renewal fee for renewals made after the first day of July each year.

(c) Any person who fails to renew his certificate for a period of two consecutive years may be required by the Board to take and pass the same examination as unlicensed applicants before allowing such person to renew his certificate.

(d) The Board may contract with persons for the development and administration of the examinations required by G.S. 143-151.13(a), for course development related to the examinations, for review of a particular applicant's examination, and for other related services. The person with whom the Board contracts may charge applicants a reasonable fee for the costs associated with the development and administration of the examinations, for course development related to the examinations, for review of the applicant's examinations, and for other related services. The fee shall be agreed to by the Board and the other contracting party. The amount of the fee under this subsection shall not exceed one hundred seventy-five dollars ($175.00). Contracts for the development and administration of the examinations, for course development related to the examinations, and for review of examinations shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes. (1977, c. 531, s. 1; 2005-289, s. 1; 2008-124, s. 8.2.)

Editor's Note. — Session Laws 2008-124, s. 11.1 is a severability clause.

Effect of Amendments. — Session Laws 2008-124, s. 8.2, effective July 28, 2008, rewrote subsection (d).

ARTICLE 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

§ 143-166.2. Definitions.

(a) The term "dependent child" shall mean any unmarried child of the deceased officer, fireman, rescue squad worker or senior member of the Civil

Air Patrol whether natural, adopted, posthumously born or whether an illegitimate child as entitled to inherit under the Intestate Succession Act, who is under 18 years of age and dependent upon and receiving his chief support from said officer or fireman or rescue squad worker or senior member of the Civil Air Patrol at the time of his death; provided, however, that if a dependent child is entitled to receive benefits at the time of the officer's or fireman's or rescue squad worker's or senior Civil Air Patrol member's death as hereinafter provided, he shall continue to be eligible to receive such benefits regardless of his age thereafter; and further provided that any child over 18 years of age who is physically or mentally incapable of earning a living and any child over 18 years of age who was enrolled as a full-time student at the time of the officer's, the fireman's, the rescue squad worker's or the senior Civil Air Patrol member's death shall so long as he remains a full-time student as defined in the Social Security Act be regarded as a dependent child and eligible to receive benefits under the provisions of this Article.

(b) The term "dependent parent" shall mean the parent of the deceased officer, fireman, rescue squad worker or senior member of the Civil Air Patrol, whether natural or adoptive, who was dependent upon and receiving his total and entire support from the officer, fireman, rescue squad worker or senior member of the Civil Air Patrol at the time of the injury which resulted in his death.

(c) The term "killed in the line of duty" shall apply to any law-enforcement officer, fireman, rescue squad worker who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while in the discharge of his official duty or duties. When applied to a senior member of the Civil Air Patrol as defined in this Article, "killed in the line of duty" shall mean any such senior member of the North Carolina Wing-Civil Air Patrol who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while engaged in a State requested and approved mission pursuant to Article 11 of Chapter 143B of the General Statutes. For purposes of this Article, when a law enforcement officer, fireman, rescue squad worker, or senior Civil Air Patrol member dies as the direct and proximate result of a myocardial infarction suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation, the law enforcement officer, fireman, rescue squad worker, or senior Civil Air Patrol member is presumed to have been killed in the line of duty.

(d) The term "law-enforcement officer", "officer", or "fireman" shall mean a sheriff and all law-enforcement officers employed full-time, permanent part-time, or temporarily by a sheriff, the State of North Carolina or any county or municipality thereof, whether paid or unpaid; and all full-time custodial employees and probation and parole officers of the North Carolina Department of Correction; and all full time institutional and full-time, permanent part-time, and temporary detention employees of the Department of Juvenile Justice and Delinquency Prevention and full-time, permanent part-time, and temporary detention officers employed by any sheriff, county or municipality, whether paid or unpaid. The term "firemen" shall mean both "eligible firemen" as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the North Carolina Division of Forest Resources, Department of Environment and Natural Resources, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated; and shall mean all otherwise eligible persons who, while actively engaged as firefighters or rescue squad workers, are acting in the capacity of a fire or rescue instructor outside their own department or squad. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term "Civil Air Patrol members" shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-491(a). The term "fireman" shall also mean county fire marshals when engaged in the performance of their county duties. The term "rescue squad worker" shall also mean county emergency services coordinators when engaged in the performance of their county duties.

(e) The term "spouse" shall mean the wife or husband of the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member who survives him and who was residing with such officer, fireman, rescue squad worker, or senior Civil Air Patrol member at the time of and during the six months next preceding the date of injury to such officer, fireman, rescue squad worker or senior Civil Air Patrol member which resulted in his death and who also resided with such officer, fireman, rescue squad worker or senior Civil Air Patrol member from that date of injury up to and at the time of his death and who remains unmarried during the time benefits are forthcoming; provided, however, the part of this section requiring the spouse to have been residing with the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member for six months next preceding the date of the injury which resulted in his death shall not apply where marriage occurred during this six-month period or where the officer, fireman, rescue squad worker or senior Civil Air Patrol member was absent during this six-month period due to service in the armed forces of this country.

(f) The term "official duties" means those duties performed while en route to, engaged in, or returning from training, or in the course of responding to, engaged in or returning from a call by the department of which he is a member, or from a call for assistance from any department or such organization within the State of North Carolina or within a service area contiguous to the borders of the State of North Carolina, when served or aided by a department from within the State of North Carolina. While within the State of North Carolina, any eligible person, as defined in this section or in G.S. 58-86-25, who renders service or assistance, of his own volition, at the scene of an emergency, is performing his official duties when:

(1) Reasonably apparent circumstances require prompt decisions and actions to protect persons and property; and
(2) The necessity of immediate action is so reasonably apparent that any delay in acting would seriously worsen the property damage or endanger any person's life. (1959, c. 1323, s. 1; 1965, c. 937; 1969, c.

1025; 1973, c. 634, s. 2; c. 955, ss. 1, 2; 1975, c. 19, s. 49; c. 284, s. 7; 1977, c. 1048; 1979, c. 516, ss. 2, 3; c. 869; 1981, c. 944, s. 1; 1983, c. 761, s. 237; 1987, c. 812; 1987 (Reg. Sess., 1988), c. 1050, s. 1; 1989, c. 727, s. 218(97); 1989 (Reg. Sess., 1990), c. 1024, s. 32; 1991 (Reg. Sess., 1992), c. 833, s. 5; 1997-443, ss. 11A.118(a), 11A.119(a); 2000-137, s. 4(y); 2003-284, s. 30.18A(b); 2004-124, s. 31.18C(a); 2005-276, s. 29.30C; 2005-376, s. 1; 2008-163, s. 1.)

Editor's Note. —

Session Laws 2008-163, s. 2, provides: "This act becomes effective June 1, 2008, and applies to workers' compensation claims arising from injuries occurring on or after that date and to death benefits awarded on or after that date under Article 12A of Chapter 143 of the General Statutes."

Effect of Amendments. — Session Laws 2008-163, s. 1, effective June 1, 2008, in subsection (d), substituted "'eligible firemen'" for "'eligible fireman'; or 'fireman'" near the beginning of the second sentence, and added "and shall mean all otherwise eligible persons who, while actively engaged as firefighters or rescue squad workers, are acting in the capacity of a fire or rescue instructor outside their own department or squad" at the end of the second sentence. See Editor's note for applicability.

ARTICLE 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-214.1. Water; water quality standards and classifications; duties of Commission.

Editor's Note. —

Session Laws 2008-211 enacted improvements to the rules on the management of stormwater in the coastal counties in order to protect water quality, which superceded the former rules. The act is noted in full under G.S. 143-214.7.

Session Laws 2008-211, s. 1, provides: "Disapprove Rule. — Pursuant to G.S. 150B-21.3(b1), 15A NCAC 02H.1005 (Stormwater Requirements: Coastal Counties), as adopted by the Environmental Management Commission on 10 January 2008 and approved by the Rules Review Commission on 20 March 2008, is disapproved.

"Supersede Rule. — 15A NCAC 02H.1005 (Stormwater Requirements: Coastal Counties), effective 1 September 1995, is superseded by this act. References in the North Carolina Administrative Code to 15A NCAC 02H.1005 shall be deemed to refer to the equivalent provisions of this act."

CASE NOTES

"Best Usage" Defined. — G.S. 143-214.1(b) provides that in classifying a water body each classification and the standards applicable thereto should be adopted with primary reference to the best usage to be made of the waters to which such classification will be assigned. "Best usage" is defined under 15A N.C. Admin. Code 2B.0211(1) to include aquatic life propagation and maintenance of biological integrity (including fishing, and fish). Table Rock Chapter of Trout Unlimited v. Envtl. Mgmt. Comm'n, — N.C. App. —, 663 S.E.2d 333, 2008 N.C. App. LEXIS 1323 (2008).

§ 143-214.7. Stormwater runoff rules and programs.

(a) Policy, Purpose and Intent. — The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

(1) Classified shellfish waters.
(2) Water supply watersheds.
(3) Outstanding resource waters.
(4) High quality waters.
(5) All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article.

(c) The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. Model stormwater management programs shall be developed to protect existing water uses and assure compliance with water quality standards and classifications. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(c1) Any land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall be enforced by any owner of the land on which the best management practice or project is located, any adjacent property owners, any downstream property owners who would be injured by failure to enforce the land-use restriction, any local government having jurisdiction over any part of the land on which the best management practice or project is located, or the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action, without first having exhausted any available administrative remedies. A land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the

State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal or exceed those of the model program adopted by the Commission pursuant to this section.

(d1) A retail merchant shall not use more than 400 square feet of impervious surface area within the portion of the merchant's premises that is designed to be used for vehicular parking for the display and sale of nursery stock, as that term is defined by the Board of Agriculture pursuant to G.S. 106-423. This subsection shall not apply to a retail merchant that either:

(1) Collects and treats stormwater on-site using a treatment system that is designed to remove at least eighty-five percent (85%) of total suspended solids. For purposes of this subdivision, a treatment system includes, but is not limited to, a filtration system or a detention system.

(2) Collects and stores stormwater for reuse on-site for irrigation or other purposes.

(3) Collects and discharges stormwater to a local or regional stormwater collection and treatment system.

(d2) Repealed by Session Laws 2008-198, s. 8(a), effective August 8, 2008.

(e) The Commission shall annually report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government, on or before 1 October of each year. (1989, c. 447, s. 2; 1995, c. 507, s. 27.8(q); 1997-458, s. 7.1; 2004-124, s. 6.29(a); 2006-246, s. 16(b); 2007-323, s. 6.22(a); 2008-198, s. 8(a).)

Implementation of Federal Phase II Stormwater Management Requirements and Protection of Water Quality, as Recommended by Environmental Review Commission. — Session Laws 2006-246, s. 9, as amended by Session Laws 2008-198, s. 6(b), effective October 1, 2008, and expiring when permanent rules to replace this section become effective, provides: "9. Post-Construction Practices. —

"(a) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:

"(1) Water Supply Watershed I (WS-I) — 15A NCAC 2B.0212.

"(2) Water Supply Watershed II (WS-II) — 15A NCAC 2B.0214.

"(3) Water Supply Watershed III (WS-III) — 15A NCAC 2B.0215.

"(4) Water Supply Watershed IV (WS-IV) — 15A NCAC 2B.0216.

"(5) Freshwater High Quality Waters (HQW) — 15A NCAC 2H.1006.

"(6) Freshwater Outstanding Resource Waters (ORW) — 15A NCAC 2H.1007.

"(7) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy — 15A NCAC 2B.0235.

"(8) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy — 15A NCAC 2B.0258.

"(9) The Randleman Lake Water Supply Watershed Nutrient Management Strategy — 15A NCAC 2B.0251.

"(b) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for best management practices (BMPs), incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (July 1, 2003, Edition).

"(c) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. The stormwater controls shall be appropriate to the project's level of density as follows:

"(1) Post-construction model practices for low-density projects. — A project that is located within one-half mile of and draining to Shellfish Resource Waters is a low-density project if it contains no more than twelve percent "(12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a low-density project if it contains no more than twenty-four percent (24%) built-upon area or no more than two dwelling units per acre. Low-density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

"(2) Post-construction model practices for high-density projects. — A project that is located within one-half mile of and draining to Shellfish Resource Waters is a high-density project if it contains more than twelve percent (12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a high-density project if it contains more than twenty-four percent (24%) built-upon area or more than two dwelling units per acre. High-density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain unless the project is in a county that is subject to the Coastal Area Management Act of 1974, in which case the project must use structural stormwater management systems that will control and treat runoff from the first one and one-half inches of rain. In addition, projects that are located within one-half mile and draining to Shellfish Resource Waters must control and treat the difference in the stormwater runoff from the predevelopment and post-development conditions for the one-year, 24-hour storm. The structural stormwater management system must also meet the following design standards:

"a. Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.

"b. Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.

"c. Remove an eighty-five percent (85%) average annual amount of Total Suspended Solids.

"d. Meet the General Engineering Design Criteria set out in 15A NCAC 02H.1008(c).

"e. Wet detention ponds designed in accordance with the requirements of subsection (h) of this section may be used for projects draining to Class SA waters.

"(d) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of this section, a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B.0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with subsection (a) of Section 11 of this act.

"(e) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.

"(f) Permittees, delegated programs, and regulated entities must impose or require recorded restrictions and protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that development activities will maintain the project consistent with approved plans.

"(g) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural BMPs required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.

"(h) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:

"(1) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.

"(2) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.

"(3) Prohibit new points of stormwater discharge to Class SA waters and prohibit both increases in the volume of stormwater flow through conveyances and increases in capacity of conveyances in existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. Diffuse flow of stormwater at a nonerosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.

"(i) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:

"(1) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.

"(2) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.

"(j) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:

"(1) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B.0200.

"(2) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.

"(k) For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

"(l) Nothing in this section shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards."

Session Laws 2006-246, s. 18, as amended by Session Laws 2008-211, s. 6, effective August 9, 2008, provides: "18. Construction of Act. —

"(1) Except as specifically provided in Section 15 of this act, nothing in this act shall be construed to limit, expand, or otherwise alter the authority of the Environmental Management Commission or any unit of local government.

"(2) The exclusions from the requirement to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit set out in 40 Code of Federal Regulations § 122.3 (July 1, 2003, Edition), including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this act.

"(3) This act shall not be construed to affect any delegation of any power or duty by the Commission to the Department or subunit of the Department.

"(4) The definitions of 'development' and 'redevelopment' set out in this act do not alter or amend the definition of 'redevelopment' set out in G.S. 113A-103 and do not apply to the Coastal Area Management Act of 1974, Article 7 of Chapter 113A of the General Statutes.

"(5) As used in Section 9 of this act, the phrase 'common plan of development or sale' shall be interpreted and implemented in a manner consistent with the memorandum referenced as 'Guidance Interpreting Phase II Stormwater Requirements' from the Director of the Division of Water Quality of the Department of Environment and Natural Resources to Interested Parties dated 24 July 2006, and for these purposes the memorandum shall be considered a part of this act and as such shall be printed as a part of the Session Laws."

Improvements in the Management of Stormwater in the Coastal Counties in order to Protect Water Quality - Supercession of Rule. — Session Laws 2008-211, s. 7, directs the Revisor of Statutes not to codify any of the provisions of Session Law 2008-211, notwithstanding G.S. 164-10, but to set out its text as an editor's note under this section.

Session Laws 2008-211, s. 1(a), effective August 9, 2008, provides: "1.(a) Disapprove Rule. — Pursuant to G.S. 150B-21.3(b1), 15A NCAC 02H.1005 (Stormwater Requirements: Coastal Counties), as adopted by the Environmental Management Commission on 10 January 2008 and approved by the Rules Review Commission on 20 March 2008, is disapproved."

Session Laws 2008-211, ss. 1(b), 2(a)-(f), and

(3), as amended by Session Laws 2008-198, s. 6(a), effective October 1, 2008, provide: "1.(b) Supersede Rule. — 15A NCAC 02H.1005 (Stormwater Requirements: Coastal Counties), effective 1 September 1995, is superseded by this act. References in the North Carolina Administrative Code to 15A NCAC 02H.1005 shall be deemed to refer to the equivalent provisions of this act.

"2.(a) Definitions. — The following definitions apply to this act and its implementation:

"(1) The definitions set out in 15A NCAC 02H.1002 (Definitions).

"(2) The definitions set out in G.S. 143-212 and G.S. 143-213.

"(3) 'Built upon area' has the same meaning as in Session Law 2006-246 and means that portion of a project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. 'Built upon area' does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

"(4) 'Permeable pavement' means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement.

"(5) 'Residential development activities' has the same meaning as in 15A NCAC 02B.0202(54).

"(6) 'Vegetative buffer' has the same meaning as in 15A NCAC 02H.1002(22) and means an area of natural or established vegetation directly adjacent to surface waters through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities.

"(7) 'Vegetative conveyance' means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.

"2.(b) Requirements for Certain Nonresidential and Residential Development in the Coastal Counties. — All nonresidential development activities that occur within the Coastal Counties that will add more than 10,000 square feet of built upon area or that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a Coastal Area Management Act (CAMA) Major Development Permit, pursuant to G.S. 113A-118 and all residential development activities within the Coastal Counties that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a Coastal Area Management Act (CAMA) Major Development Permit, pursuant to G.S. 113A-118 shall manage stormwater runoff as provided in this subsection. A development activity or project requires a Sedimentation and Erosion Control Plan if the activity or project disturbs one acre or more of land, including an activity or project that disturbs less than one acre of land that is part of a larger common plan of development. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as 'Guidance Interpreting Phase 2 Stormwater Requirements' from the Director of the Division of Water Quality of the Department of Environment and Natural Resources to Interested Parties dated 24 July 2006.

"(1) Development Near Outstanding Resource Waters (ORW). — Development activities within the Coastal Counties and located within 575 feet of the mean high waterline of areas designated by the Commission as Outstanding Resource Waters (ORW) shall meet the requirements of 15A NCAC 02H.1007 (Stormwater Requirements: Outstanding Resource Waters) and shall be permitted as follows:

"a. Low-Density Option. — Development shall be permitted pursuant to 15A NCAC 02H.1003(d)(1) if the development meets all of the following requirements:

"1. The development has a built upon area of twelve percent (12%) or less. A development project with an overall density at or below the low-density threshold, but containing areas with a density greater than the overall project density, shall be considered low-density as long as the project meets or exceeds the requirements for low-density development and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.

"2. Stormwater runoff from the development is transported primarily by vegetated conveyances. As used in this sub-sub-subdivision, 'conveyance system' shall not include a stormwater collection system. Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.

"3. The development contains a 50-foot-wide vegetative buffer for new development activities and a 30-foot-wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with and maintained in grass or any other vegetative or plant material. The Division of Water Quality may, on a case-by-case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B.0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

"b. High-Density Option. — Development shall be permitted pursuant to 15A NCAC 02H.1003(d)(2) if the development meets all of the following requirements:

"1. The development has a built upon area of greater than twelve percent (12%).

"2. The development has no direct outlet channels or pipes to Class SA waters unless permitted in accordance with 15A NCAC 02H.0126. Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.

"3. The development utilizes control systems that are any combination of infiltration systems, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative low impact development stormwater management systems designed in accordance with 15A NCAC 02H.1008 to control and treat the runoff from all surfaces generated by one and one-half inches of rainfall, or the difference in the stormwater runoff from all surfaces from the predevelopment and postdevelopment conditions for a one-year, 24-hour storm, whichever is greater. Wet detention ponds may be used as a stormwater control system to meet the requirements of this sub-sub-subdivision, provided that the stormwater control system fully complies with the requirements of this sub-subdivision. If a wet detention pond is used within one-half mile of Class SA waters, installation of a stormwater best management practice in series with the wet detention pond shall be required to treat the discharge from the wet detention pond. Secondary stormwater best management practices that are used in series with another stormwater best management practice do not require any minimum separation from the seasonal high water table. Alternatives as described in 15A NCAC 02H.1008(h) may also be approved if they meet the requirements of this sub-subdivision.

"4. Stormwater runoff from the development that is in excess of the design volume must flow overland through a vegetative filter designed in accordance with 15A NCAC 02H.1008 with a minimum length of 50 feet measured from mean high water of Class SA waters.

"5. The development contains a 50-foot-wide vegetative buffer for new development activities and a 30-foot-wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with, and maintained in, grass or any other vegetative or plant material. Furthermore, stormwater control best management practices (BMPs), or stormwater control structures, with the exception of wet detention ponds, may be located within this vegetative buffer. The Division of Water Quality may, on a case by case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B.0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

"c. Stormwater Discharges Prohibited. — All development activities, including both low- and high-density projects, shall prohibit new points of stormwater discharge to Class SA waters or an increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances of existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. The following shall not be considered a direct point of stormwater discharge:

"1. Infiltration of the stormwater runoff from the design storm as described in sub-sub-subdivision 3. of sub-subdivision b. of subdivision (1) of this subsection.

"2. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area, that is capable of providing effective infiltration of the runoff from the design storm as described in sub-sub-subdivision 3. of sub-subdivision b. of subdivision (1) of this subsection. Notwithstanding the other requirements of this section, the infiltration mandated in this sub-sub-subdivision does not require a minimum separation from the seasonal high-water table.

"3. The discharge from a wet detention pond that is treated by a secondary stormwater best management practice, provided that both the wet detention pond and the secondary stormwater best management practice meet the requirements of this sub-subdivision.

"d. Limitation on the Density of Development. — Development shall be limited to a built upon area of twenty-five percent (25%) or less.

"(2) Development Near Class SA Waters. — Development activities within one-half mile of and draining to those waters classified by the Commission as Class SA waters or within one-half mile of waters classified by the Commission as Class SA waters and draining to unnamed freshwater tributaries to Class SA waters shall meet the requirements of sub-subdivisions a., b., and c. of subdivision (1) of this subsection. The extent of Class SA waters is limited to those waters that are determined to be at least an intermittent stream based on a site stream determination made in accordance with the procedures that are delineated in the Division of Water Quality's 'Identification Methods for the Origin of Intermittent and Perennial Streams' prepared pursuant to Session Law 2001-404.

"(3) Other Coastal Development. — Development activities within the Coastal Counties except those areas described in subdivisions (1) and (2) of this subsection shall meet all of the following requirements:

"a. Low-Density Option: Development shall be permitted pursuant to 15A NCAC 02H.1003(d)(1) if the development meets all of the following requirements:

"1. The development has a built upon area of twenty-four percent (24%) or less. A development project with an overall density at or below the low-density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low-density development and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

"2. Stormwater runoff from the development is transported primarily by vegetated conveyances. As used in this sub-sub-subdivision, 'conveyance system' shall not include a stormwater collection system. Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.

"3. The development contains a 50-foot-wide vegetative buffer for new development activities and a 30-foot-wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with, and maintained in, grass or any other vegetative or plant material. The Division of Water Quality may, on a case-by-case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B.0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

"b. High-Density Option: Higher density developments shall be permitted pursuant to 15A NCAC 02H.1003(d)(2) if the development meets all of the following requirements:

"1. The development has a built upon area of greater than twenty-four percent (24%).

"2. The development uses control systems that are any combination of infiltration systems, wet detention ponds, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative stormwater management systems designed in accordance with 15A NCAC 02H.1008.

"3. Control systems must be designed to store, control, and treat the stormwater runoff from all surfaces generated by one and one-half inch of rainfall.

"4. Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.

"5. A 50-foot-wide vegetative buffer for new development activities and a 30-foot-wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with, and maintained in, grass or any other vegetative or plant material. Furthermore, stormwater control best management practices (BMPs), or stormwater control structures, with the exception of wet detention ponds, may be located within this vegetative buffer. The Division of Water Quality may, on a case by case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B.0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

"(4) Requirements for Structural Stormwater Controls. — Structural stormwater controls required under this section shall meet all of the following requirements:

"a. Remove an eighty-five percent (85%) average annual amount of Total Suspended Solids.

"b. For detention ponds, draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.

"c. Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.

"d. Meet the General Engineering Design Criteria set forth in 15A NCAC 02H.1008(c).

"e. For structural stormwater controls that are required under this section and that require separation from the seasonal high-water table, a minimum separation of two feet is required. Where a separation of two feet from the seasonal highwater table is not practicable, the Division of Water Quality may grant relief from the separation requirement pursuant to the Alternative Design Criteria set out in 15A NCAC 02H.1008(h). No minimum separation from the seasonal highwater table is required for a secondary stormwater best management practice that is used in a series with another stormwater best management practice.

"(5) Certain Wetlands Excluded From Density Calculation. — For the purposes of this section, areas defined as Coastal Wetlands under 15A NCAC 07H.0205, as measured landward from the normal high waterline, shall not be included in the overall project area to calculate impervious surface density. Wetlands that are not regulated as coastal wetlands pursuant to 15A NCAC 07H.0205 and that are located landward of the normal high waterline may be included in the overall project area to calculate impervious surface density.

"2.(c) Requirements for Limited Residential Development in Coastal Counties. — For residential development activities within the 20 Coastal Counties that are located within one-half mile and draining to Class SA waters, that have a built upon area greater than twelve percent (12%), that do not require a stormwater management permit under subsection (b) of this section, and that will add more than 10,000 square feet of built upon area, a one-time, nonrenewable stormwater management permit shall be obtained. The permit shall require recorded deed restrictions or protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that the plans and specifications approved in the permit are maintained. Under this permit, stormwater runoff shall be managed using any one or combination of the following practices:

"(1) Install rain cisterns or rain barrels designed to collect all rooftop runoff from the first one and one-half inches of rain. Rain barrels and cisterns shall be installed in such a manner as to facilitate the reuse of the collected rain water on site and shall be installed in such a manner that any overflow from these devices is directed to a vegetated area in a diffuse flow. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.

"(2) Direct rooftop runoff from the first one and one-half inches of rain to an appropriately sized and designed rain garden. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.

"(3) Install any other stormwater best management practice that meets the requirements of 15A NCAC 02H.1008 to control and treat the stormwater runoff from all built upon areas of the site from the first one and one-half inches of rain.

"2.(d) Exclusions. — The requirements of this section shall not apply to any of the following:

"(1) Activities of the North Carolina Department of Transportation that are regulated in accordance with the provisions of the Department's National Pollutant Discharge Elimination System (NPDES) Stormwater Permit.

"(2) Development activities that are conducted pursuant to and consistent with one of the following authorizations, or any timely renewal thereof, shall be regulated by those provisions and requirements of 15A NCAC 02H.1005 that were effective at the time of the original issuance of the following authorizations:

"a. State Stormwater Permit issued under the provisions of 15A NCAC 02H.1005.

"b. Stormwater Certification issued pursuant to 15A NCAC 02H.1000 prior to 1 December 1995.

"c. A Coastal Area Management Act Major Permit.

"d. 401 Certification that contains an approved Stormwater Management Plan.

"e. A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.

"f. A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).

"g. A phased development plan approved pursuant to G.S. 153A-344.1 or G.S. 160A-385.1 that shows:

"1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335 or G.S. 160A-371 through G.S. 160A-376.

"2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this section to that phase of development would require a material change in that phase of the plan.

"h. A vested right to the development pursuant to common law.

"(3) Redevelopment activities that result in no net increase in built upon area and provide stormwater control equal to the previous development.

"(4) Development activities for which a complete Stormwater Permit Application has been accepted by the Division of Water Quality prior to the effective date of this act, shall be regulated by the provisions and requirements of 15A NCAC 02H.1005 that were effective at the time that this application was accepted as complete by the Division of Water Quality. For purposes of this subsection, a Stormwater Permit Application is deemed accepted as complete by the Division of Water Quality when the application is assigned a permit number in the Division's Basinwide Information Management System.

"(5) Development activities for which only a minor modification of a State Stormwater Permit is required shall be regulated by the provisions and requirements of 15A NCAC 02H.1005 that were effective at the time of the original issuance of the State Stormwater Permit. For purposes of this subsection, a minor modification of a State Stormwater Permit is defined as a modification that does not increase the net area of built upon area within the project site or does not increase the overall size of the stormwater controls that have been previously approved for that development activity.

"(6) Municipalities designated as a National Pollutant Discharge Elimination System (NPDES) Phase 2 municipality located within the 20 Coastal Counties until such time as the NPDES Phase 2 Stormwater Permit expires and is subject to renewal. Upon renewal of the NPDES Phase 2 Stormwater Permits for municipalities located within the 20 Coastal Counties, the Department shall review the permits to determine whether the permits should be amended to include the provisions of this section.

"2.(e) Exemptions From Vegetative Buffer Requirements. — The following activities are exempt from the vegetative buffer requirements of this section:

"(1) Development in urban waterfronts that meets the requirements of 15A NCAC 07H.0209(g),

"(2) Development in a new urban waterfront area that meets the requirements of Session Law 2004-117,

"(3) Those activities listed in 15A NCAC 07H.0209(d)(10)(A) through 15A NCAC 07H.0209(d)(10)(H),

"(4) Those activities listed in 15A NCAC 07H.0209(d)(10)(A) through 15A NCAC 07H.0209(d)(10)(H),

"2.(f) Compliance with Other Rules. — In addition to the requirements specified in this section, activities regulated under this section must also comply with any requirements of any other applicable law or rule.

"3. Rescission of Phase 2 Designations. — All designations of local governments within the 20 Coastal Counties as Phase 2 municipalities by the Environmental Management Commission under Section 5 of Session Law 2006-246 that occurred after 16 August 2006 are rescinded. The provisions of this section do not preclude any future designations of these areas as Phase 2 municipalities by the Environmental Management Commission under Section 5 of Session Law 2006-246."

Session Laws 2008-211, s. 4(a), effective August 9, 2008, provides: "4.(a) Additional Rule Making. — The Commission may adopt rules to replace the rules that are disapproved or superseded as provided in Section 1 of this act. If the Commission adopts rules pursuant to this section, notwithstanding G.S. 150B-19(4), the rules shall be substantively identical to the provisions of Section 2 of this act. The Commission may reorganize or renumber any of the rules to which this section applies at its discretion. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)."

Session Laws 2008-211, s. 4(b), as added by Session Laws 2008-198, s. 5, effective August 8, 2008, provides: "4.(b) Temporary Limitation on Additional Rule Making. —

"(1) In order to provide sufficient time for full implementation of this act, to provide sufficient time for accumulation and evaluation of data as to the effect of implementation of this act on coastal water quality, to provide time for additional scientific study of factors that impact coastal water quality, to allow for the development of proposals for improvements to the provisions of Section 2 of this act based on careful consideration of the foregoing, and to provide a period of predictability for persons who may be affected by the provisions of Section 2 of this act; except as may be specifically required by federal law and except as provided in subsection (a) of this section; the Environmental Management Commission shall not begin a procedure to adopt any additional temporary or permanent rule governing the management of stormwater runoff in the Coastal Counties pursuant to subdivisions (1) and (3) of G.S. 143-214.7(b) prior to 1 October 2011.

"(2) Before the Environmental Management Commission begins a procedure to adopt any additional temporary or permanent rule governing the management of stormwater runoff in the Coastal Counties pursuant to subdivisions (1) and (3) of G.S. 143-214.7(b), the Environmental Management Commission shall submit a report to the Environmental Review Commission that details the effect of the implementation of Section 2 of this act on coastal water quality. The report shall include information on improvements in coastal water quality, remaining deficiencies in coastal water quality, and the measures that the Environmental Management Commission believes may be necessary to maintain and further improve coastal water quality.

"(3) Any additional rules that the Environmental Management Commission may adopt governing the management of stormwater runoff in the Coastal Counties pursuant to subdivisions (1) and (3) of G.S. 143-214.7(b) shall not become effective prior to 1 October 2013.

"(4) If the Environmental Management Commission adopts a temporary or permanent rule pursuant to the authority of any provision of State law other than subdivisions (1) and (3) of G.S. 143-214.7(b) that governs the management of stormwater runoff in the Coastal Counties, the provisions of that rule shall not apply within the Coastal Counties until 1 October 2011 except as may be specifically required by federal law and except as provided in subsection (a) of this section."

Session Laws 2008-211, ss. 5, 7 and 8, effective August 9, 2008, provide: "5. Construction of Act. —

"(1) Except as specifically provided in Section 4 of this act, nothing in this act shall be construed to limit, expand, or otherwise alter the authority of the Environmental Management Commission or any unit of local government.

"(2) This act shall not be construed to affect any delegation of any power or duty by the Commission to the Department or subunit of the Department.

"(3) As used in subsection (b) of Section 2 of this act, the phrase 'common plan of development' shall be interpreted and implemented in a manner consistent with the memorandum referenced as 'Guidance Interpreting Phase 2 Stormwater Requirements' from the Director of the Division of Water Quality of the Department of Environment and Natural Resources to Interested Parties dated 24 July 2006, and for these purposes the memorandum shall be considered a part of this act and as such shall be printed as a part of the Session Laws.

"7. Provisions of Act Not Codified; Set Out As Note. — Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate.

"8. Effective Date. — Subsection (b) of Section 1 of this act and Sections 2 and 3 of this act become effective 1 October 2008. All other sections of this act are effective when this act becomes law [August 9, 2008]."

Editor's Note. — Session Laws 2007-323, s. 6.22, which added subsection (d2), was repealed by Session Laws 2008-198, s. 8(a), effective August 8, 2008. As a result, subsection (d2), which was to be effective October 1, 2008, never took effect.

Session Laws 2008-107, s. 25.18(a)-(c), provides: "(a) Of funds available to the Department of Transportation, the Department, in cooperation with the Center for Transportation and the Environment at North Carolina State University, shall conduct a pilot study on 50 bridges, located throughout the State in various ecosystems, of the installation of various types of storm water detention, collection, and filtering systems during new bridge construction over waterways. The Department may also retrofit existing bridges as part of its pilot study. Treatments and methods used in the pilot study shall include but not be limited to those treatments found effective by other states and new treatments identified through investigation and research which may be effective. Construction or retrofitting shall be initiated on at least 25 of the 50 bridges by July 1, 2009. Construction or retrofitting shall be initiated on the remaining bridge projects by January 1, 2010.

"(b) An interim report shall be made to the Joint Legislative Transportation Oversight Committee no later than July 1, 2009, that includes information which quantifies stormwater runoff at structures as well as the types of pollutants, the various treatments which will be constructed and evaluated to target these pollutant types, and a measurement and collection plan to determine effectiveness of the evaluated treatments.

"(c) A final report shall be made to the Joint Legislative Transportation Oversight Committee no later than July 1, 2010. The final report shall include as a minimum, the effectiveness of the treatments included in the study, costs of each treatment, and the costs of implementing effective treatments on new bridge construction projects as well as existing bridge retrofit projects for all bridges over waterways in the State."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2008-181, s. 6.3, provides: "Stormwater Permitting — The Commission may study the feasibility of implementing a stormwater management program under G.S. 143-214.7 without requiring the issuance of a State permit prior to construction. The study shall consider the potential for accepting an engineering certification that the stormwater management system complies with stormwater requirements set out in statute or in the rules of the Environmental Management Commission in place of a permit review by the Department of Environment and Natural Resources. The study shall address issues related to enforcement of stormwater requirements; the impact on stormwater programs delegated to and implemented by units of local government; consistency with federal requirements under the Clean Water Act, including limits on non-point source runoff under a Total Maximum Daily Load for impaired waters; the ability to accurately track nutrient reductions under nutrient sensitive waters strategies; implications for other environmental review processes, included related permitting programs; potential impacts on the State's ability to protect water quality and aquatic resources. The study shall also consider the costs and benefits to the property owner or developer."

§ 143-214.11. Ecosystem Enhancement Program: compensatory mitigation.

(a) Definition. — For purposes of this section, the term "compensatory mitigation" means the restoration, creation, enhancement, or preservation of wetlands or other areas required as a condition of a section 404 permit issued by the United States Army Corps of Engineers.

(b) Department of Environment and Natural Resources to Coordinate Compensatory Mitigation. — All compensatory mitigation required by permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 shall be coordinated by the Department consistent with the basinwide plans for wetlands restoration and rules developed by the Environmental Management Commission. All compensatory wetlands mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans.

(c) Mitigation Emphasis on Replacing Ecological Function Within Same River Basin. — The emphasis of mitigation is on replacing functions within the same river basin unless it is demonstrated that restoration of other areas would be more beneficial to the overall purposes of the Ecosystem Enhancement Program.

(d) Compensatory Mitigation Options Available to the North Carolina Department of Transportation. — The North Carolina Department of Transportation may satisfy compensatory wetlands mitigation requirements by the following actions, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the United States Army Corps of Engineers:

(1) Payment of a fee established by the Department into the Ecosystem Restoration Fund established in G.S. 143-214.12.
(2) Donation of land to the Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.
(3) Participation in a private wetlands mitigation bank.
(4) Preparing and implementing a wetlands restoration plan.

(d1) Compensatory Mitigation Options Available to Applicants Other than the North Carolina Department of Transportation. — An applicant other than the North Carolina Department of Transportation may satisfy compensatory wetlands mitigation requirements by the following actions, if those actions meet or exceed the requirements of the United States Army Corps of Engineers:

(1) Participation in a private wetlands mitigation bank. — This option is only available in a hydrologic area where there is at least one private wetlands mitigation bank that has been (i) approved by the United States Army Corps of Engineers and that has available mitigation credit or (ii) approved by the North Carolina Division of Water Quality for resources regulated under the Neuse and Tar-Pam rules and that has available mitigation credit. For purposes of this subdivision, "hydrologic area" means the eight-digit Hydrologic Unit Code where the mitigation bank is located.

(2) Payment of a fee established by the Department into the Ecosystem Restoration Fund established in G.S. 143-214.12. — This option is only available to an applicant if the option under subdivision (1) of this subsection is not available as an option.

(3) Donation of land to the Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.

(4) Preparing and implementing a wetlands restoration plan.

(e) Payment Schedule. — A standardized schedule of per-acre payment amounts shall be established by the Environmental Management Commission. The monetary payment shall be based on the ecological functions and values of wetlands permitted to be lost and on the cost of restoring or creating wetlands capable of performing the same or similar functions, including directly related costs of wetlands restoration planning, long-term monitoring, and maintenance of restored areas.

(f) Mitigation Banks. — State agencies and private mitigation banking companies shall demonstrate that adequate, dedicated financial surety exists to provide for the perpetual land management and hydrological maintenance of lands acquired by the State as mitigation banks, or proposed to the State as privately operated and permitted mitigation banks.

(g) Payment for Taxes. — A State agency acquiring land to restore, enhance, preserve, or create wetlands must also pay a sum in lieu of ad valorem taxes lost by the county in accordance with G.S. 146-22.3. (1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 1997-443, s. 11A.119(a); 2004-188, s. 2; 2005-386, s. 3.4; 2008-152, s. 1.)

Effect of Amendments. — Session Laws 2008-152, s. 1, effective October 1, 2008, and applicable to applications for a mitigation permit submitted on or after that date, substituted "the North Carolina Department of Transportation. — The North Carolina Department of Transportation" for "Applicant. — An Applicant" in the introductory language of subsection (d); and added subsection (d1).

§ 143-215.1. Control of sources of water pollution; permits required.

Editor's Note. —

Session Laws 2008-211 enacted improvements to the rules on the management of stormwater in the coastal counties in order to protect water quality, which superceded the former rules. The act is noted in full under G.S. 143-214.7.

Session Laws 2008-211, s. 1(a)-(b), provides: "(a) Disapprove Rule. — Pursuant to G.S. 150B-21.3(b1), 15A NCAC 02H.1005 (Stormwater Requirements: Coastal Counties), as adopted by the Environmental Management Commission on 10 January 2008 and approved by the Rules Review Commission on 20 March 2008, is disapproved.

"(b) Supersede Rule. — 15A NCAC 02H.1005 (Stormwater Requirements: Coastal Counties), effective 1 September 1995, is superseded by this act. References in the North Carolina Administrative Code to 15A NCAC

02H.1005 shall be deemed to refer to the equivalent provisions of this act."

§ 143-215.3. General powers of Commission and Department; auxiliary powers.

Editor's Note. —

Session Laws 2008-137, ss. 1-4, provide: "Section 1. The Environmental Review Commission ('Commission') shall study the impacts on the State of the potential issuance of a new fifty-year license by the Federal Energy Regulatory Commission ('FERC') to Alcoa Power Generating, Inc., ('APGI') in the FERC relicensing proceeding known as FERC Project No. P-2197. The Commission is authorized to consider and develop proposals regarding all of the following issues:

"(1) The socioeconomic impacts of APGI's decision to discontinue its job-producing manufacturing activities at its Badin facility that relied on the use of low-cost power from the Yadkin Hydroelectric Project.

"(2) Assurance of an adequate, clean future water supply for the region.

"(3) The allocation of water for non-power uses from the Yadkin Hydroelectric Project.

"Section 2. The Commission shall submit a report to the 2009 General Assembly no later than February 1, 2009. This report shall include findings and any recommendations, including legislative proposals that would assist in implementing the recommendations.

"Section 3. Nothing in this act shall preclude the Governor or any State agency or department from taking any action necessary to protect the interest of the State in the FERC relicensing procedure known as FERC Project No. P-2197.

"Section 4. The Department of Environment and Natural Resources ('DENR') shall, to the extent allowed by State and federal statutes and rules, and without delaying its decision, consider the report submitted by the Commission under Section 2 of this act in making any decision on an application for water quality certification requested by APGI in connection with FERC relicensing of Project No. P-2197. The report submitted by the Commission under Section 2 of this act shall be included in the information necessary to trigger the 60-day time limit for the Director's decision pursuant to 15A NCAC 02H.0507(a) and shall be promptly supplied to the Director of the Division of Water Quality in DENR upon receipt by the General Assembly. Failure by the Commission to issue a report by the date specified in Section 2 will not prohibit DENR from making a final determination on such certification, nor is it the intent of the General Assembly to delay the processing by DENR of any such certification. Nothing in this act shall affect the authority of DENR to provide notices, request additional studies or information, conduct hearings, or issue or deny a 401 Water Quality Certification for FERC relicensing Project No. P-2197."

Session Laws 2008-211 enacted improvements to the rules on the management of stormwater in the coastal counties in order to protect water quality, which superceded the former rules. The act is noted in full under G.S. 143-214.7.

Session Laws 2008-211, s. 1(a)-(b), provides: "(a) Disapprove Rule. — Pursuant to G.S. 150B-21.3(b1), 15A NCAC 02H.1005 (Stormwater Requirements: Coastal Counties), as adopted by the Environmental Management Commission on 10 January 2008 and approved by the Rules Review Commission on 20 March 2008, is disapproved.

"(b) Supersede Rule. — 15A NCAC 02H.1005 (Stormwater Requirements: Coastal Counties), effective 1 September 1995, is superseded by this act. References in the North Carolina Administrative Code to 15A NCAC 02H.1005 shall be deemed to refer to the equivalent provisions of this act."

§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.

(a) The Water and Air Quality Account is established as a nonreverting account within the Department. Revenue in the Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. 105-449.43, G.S. 105-449.125, and G.S. 105-449.136 shall be used to administer the air quality program. Except for the following fees, all application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

(1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.
(2) Fees credited to the Title V Account.
(3) Repealed by Session Laws 2005-454, s. 7, effective January 1, 2006.
(4) Fees collected under G.S. 143-215.28A.
(5) Fees collected under G.S. 143-215.94C shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(a1) The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a), after deducting those monies collected under G.S. 143-215.3(a)(1d), shall not exceed thirty percent (30%) of the total budgets from all sources of environmental permitting and compliance programs within the Department. This subsection shall not be construed to relieve any person of the obligation to pay a fee established under this Article or Articles 21A, 21B, or 38 of this Chapter.

(b) The Title V Account is established as a nonreverting account within the Department. Revenue in the Account shall be used for developing and implementing a permit program that meets the requirements of Title V. The Title V Account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Fees collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and indirect costs required to develop and administer the Title V permit program, and fees collected under G.S. 143-215.106A shall be used only for the eligible expenses of the Title V program. Expenses of the Small Business Environmental Advisory Panel, the ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services provided by the Attorney General, and contracts with consultants and program expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

(b1) The I & M Air Pollution Control Account is established as a nonreverting account within the Department. Fees transferred to the Division of Air Quality of the Department pursuant to G.S. 20-183.7(c) shall be credited to the I & M Air Pollution Control Account and shall be applied to the costs of developing and implementing an air pollution control program for mobile sources.

(c) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the State's environmental permitting programs contained within the Department on or before 1 November of each year. In addition, the Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the Title V Program on or before 1 November of each year. The reports shall include, but are not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly. (1987, c. 767, s. 2; 1989, c. 500, s. 121; c. 727, s. 218(104); 1989 (Reg. Sess., 1990), c. 976, s. 2; 1991, c. 552, s. 3; 1991 (Reg. Sess., 1992), c. 1039, s. 12; 1993, c. 400, s. 14; 1995, c. 390, s. 28; 1995 (Reg. Sess., 1996), c. 743, s. 13; 1998-212, s. 29A.11(c); 2001-452, s. 2.4; 2001-474, s. 27; 2005-386, s. 8.1; 2005-454, s. 7; 2008-198, s. 11.2.)

Editor's Note. —

Session Laws 2008-107, s. 12.7, provides: "From funds in the I & M Air Pollution Control Account, there is appropriated the sum of seven hundred fifty thousand dollars ($750,000) for the 2008-2009 fiscal year to the Office of State Budget and Management, Litigation Reserve. Notwithstanding G.S. 143-215.3A, these funds shall be used by the Department of Justice solely for expenses related to either ex rel.

Cooper v. Tennessee Valley Authority, No. 1:06CV20 (W.D.N.C. filed Jan. 30, 2006) or South Carolina v. North Carolina, No. 220138 ORG (U.S. Sup. Ct. filed June 7, 2007). Any of these funds that remain unused on June 30, 2009, shall revert to the I & M Air Pollution Control Account."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-198, s. 11.2, effective August 8, 2008, in subsection (a), substituted "G.S. 105-449.136" for "105-449.134" and made a related change.

§ 143-215.6A. Enforcement procedures: civil penalties.

CASE NOTES

Cited in Lancaster v. N.C. Dep't of Env't & Natural Res., Div. of Waste Mgmt., — N.C. App. —, 652 S.E.2d 359, 2007 N.C. App. LEXIS 2304 (2007).

§ 143-215.6B. Enforcement procedures: criminal penalties.

CASE NOTES

Cited in Lancaster v. N.C. Dep't of Env't & Natural Res., Div. of Waste Mgmt., — N.C. App. —, 652 S.E.2d 359, 2007 N.C. App. LEXIS 2304 (2007).

§ 143-215.6C. Enforcement procedures; injunctive relief.

CASE NOTES

Cited in Lancaster v. N.C. Dep't of Env't & Natural Res., Div. of Waste Mgmt., — N.C. App. —, 652 S.E.2d 359, 2007 N.C. App. LEXIS 2304 (2007).

Part 2A. Registration of Water Withdrawals and Transfers; Regulation of Surface Water Transfers.

§ 143-215.22G. Definitions.

Allocation of Surface Water Resources Study — Session Laws 2007-518, s. 1(a), as amended by Session Laws 2008-10, s. 1, provides: "The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall study the allocation of surface water resources and their availability and maintenance in the State, including issues related to the transfer of water from one river basin to another, the withdrawal of water for consumptive use, and the accuracy and tolerance of equipment used to measure the flow of water transferred from one river basin to another river basin. The Commission shall evaluate the benefits of establishing formal and informal procedures for negotiating transfers of water from one river basin to another. The Commission shall also study and recommend measures to: (i) ensure that the purposes of the Regional Water Supply Planning Act of 1971, as set out in G.S. 162A-21, are fulfilled; (ii) provide for a comprehensive system for regulating surface water withdrawals for consumptive and nonconsumptive uses; (iii) provide for the establishment of a statewide plan for water resources development projects; (iv) provide for adequate resources for the Department so that it may develop and implement a comprehensive approach to water resources management; (v) ensure that all

State laws regulating water resources are consistent with and fully integrated into the comprehensive system for regulating surface water withdrawals and the statewide plan for water resources development projects; and (vi) ensure that potential interstate conflicts related to water resources are avoided or minimized. In the conduct of this study, the Environmental Review Commission may employ independent consultants as provided in G.S. 120-32.02 and G.S. 120-70.44. The Environmental Review Commission may submit interim reports to the 2008 and 2009 regular sessions of the General Assembly and shall submit a final report of its findings and recommendations, including any legislative proposals, to the General Assembly on or before 1 October 2010."

Session Laws 2008-125, s. 2 provides: "As a part of the study by the Environmental Review Commission of the allocation of water resources in this State pursuant to subsection (a) of Section 1 of S.L. 2007-518, the Environmental Review Commission shall study the delineation of major river basins and subbasins within the State. The Commission shall determine whether the definition of 'river basin' set out in G.S. 143-215.22G and the accompanying map should be revised. The Commission shall report its findings and recommendations as provided in subsection (a) of Section 1 of S.L. 2007-518, as amended."

Session Laws 2008-143, s. 6, provides: "The Environmental Review Commission, as part of its ongoing study of the allocation of water resources in the State required by Section 1 of S.L. 2007-518, shall study issues related to increasing water supply, including issues related to reservoir construction and State laws and rules governing reservoir construction. The Environmental Review Commission shall report its findings and recommendations, including any legislative proposals, to the General Assembly as provided by Section 1 of S.L. 2007-518, as amended."

§ 143-215.22H. Registration of water withdrawals and transfers required.

(a) Any person who withdraws 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

(1) The maximum daily amount of the water withdrawal or transfer expressed in thousands of gallons per day.

(1a) The monthly average withdrawal or transfer expressed in thousands of gallons per day.

(2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.

(3) The monthly average discharge expressed in thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of 100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than two months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

(b1) Subsections (a) and (b) of this section shall not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products, or to the creation or maintenance of waterfowl impoundments.

(b2) Registration of a withdrawal or transfer of water under this section or information that is provided by a water user pursuant to G.S. 106-24 and authorized for release to the Commission by the individual water user may be used as evidence of historic water use in the event that it becomes necessary or desirable to allocate available water resources among specific classes, persons, or individuals who use water resources.

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at five-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the civil penalty established under this section in the event that updated information is not submitted as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a civil penalty of one hundred dollars ($100.00). A person who is required to update a registration under this section and fails to do so shall pay a civil penalty of fifty dollars ($50.00). For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation. A separate penalty may be assessed for each separate violation. (1991, c. 712, s. 1; 1993, c. 344, s. 1; c. 553, s. 81; 1998-168, s. 3; 2008-143, s. 1; 2008-198, s. 11.6.)

Editor's Note. —
Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

Session Laws 2008-198, s. 11.6, was contingent on House Bill 2499 (Session Laws 2008-143) becoming law, which it did.

Effect of Amendments. — Session Laws 2008-143, s. 1, effective October 1, 2008, in subsection (b), substituted "two months" for "six months" in the first sentence; in subsection (b1), added "or to the creation or maintenance of waterfowl impoundments" at the end; added subsection (b2); and rewrote subsection (e).

Session Laws 2008-198, s. 11.6, effective August 8, 2008, substituted "civil penalty" for "late registration fee" in subsection (d).

§ 143-215.22L. Regulation of surface water transfers.

(a) Certificate Required. — No person, without first obtaining a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending 1 July 1993 if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to 1 July 1993.

(b) Exception. — Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was in existence or under construction on 1 July 1993.

(c) Notice of Intent to File a Petition. — An applicant shall prepare a notice of intent to file a petition that includes a nontechnical description of the applicant's request and an identification of the proposed water source. Within

90 days after the applicant files a notice of intent to file a petition, the applicant shall hold at least one public meeting in the source river basin upstream from the proposed point of withdrawal, at least one public meeting in the source river basin downstream from the proposed point of withdrawal, and at least one public meeting in the receiving river basin to provide information to interested parties and the public regarding the nature and extent of the proposed transfer and to receive comment on the scope of the environmental documents. Written notice of the public meetings shall be provided at least 30 days before the public meetings. At the time the applicant gives notice of the public meetings, the applicant shall request comment on the alternatives and issues that should be addressed in the environmental documents required by this section. The applicant shall accept written comment on the scope of the environmental documents for a minimum of 30 days following the last public meeting. Notice of the public meetings and opportunity to comment on the scope of the environmental documents shall be provided as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in:

a. Each county in this State located in whole or in part of the area of the source river basin upstream from the proposed point of withdrawal.

b. Each city or county located in a state located in whole or in part of the surface drainage basin area of the source river basin that also falls within, in whole or in part, the area denoted by one of the following eight-digit cataloging units as organized by the United States Geological Survey:

03050105 (Broad River: NC and SC);
03050106 (Broad River: SC);
03050107 (Broad River: SC);
03050108 (Broad River: SC);
05050001 (New River: NC and VA);
05050002 (New River: VA and WV);
03050101 (Catawba River: NC and SC);
03050103 (Catawba River: NC and SC);
03050104 (Catawba River: SC);
03010203 (Chowan River: NC and VA);
03010204 (Chowan River: NC and VA);
06010105 (French Broad River: NC and TN);
06010106 (French Broad River: NC and TN);
06010107 (French Broad River: TN);
06010108 (French Broad River: NC and TN);
06020001 (Hiwassee River: AL, GA, TN);
06020002 (Hiwassee River: GA, NC, TN);
06010201 (Little Tennessee River: TN);
06010202 (Little Tennessee River: TN, GA, and NC);
06010204 (Little Tennessee River: NC and TN);
03060101 (Savannah River: NC and SC);
03060102 (Savannah River: GA, NC, and SC);
03060103 (Savannah River: GA and SC);
03060104 (Savannah River: GA);
03060105 (Savannah River: GA);
03040203 (Lumber River: NC and SC);
03040204 (Lumber River: NC and SC);
03040206 (Lumber River: NC and SC);
03040207 (Lumber River: NC and SC);
03010205 (Albemarle Sound: NC and VA);

06020003 (Ocoee River: GA, NC, and TN);
03010101 (Roanoke River: VA);
03010102 (Roanoke River: NC and VA);
03010103 (Roanoke River: NC and VA);
03010104 (Roanoke River: NC and VA);
03010105 (Roanoke River: VA);
03010106 (Roanoke River: NC and VA);
06010102 (Watauga River: TN and VA);
06010103 (Watauga River: NC and TN);
03040101 (Yadkin River: VA and NC);
03040104 (Yadkin River: NC and SC);
03040105 (Yadkin River: NC and SC);
03040201 (Yadkin River: NC and SC);
03040202 (Yadkin River: NC and SC).

c. Each county in this State located in whole or in part of the area of the source river basin downstream from the proposed point of withdrawal.

d. Any area in the State in a river basin for which the source river basin has been identified as a future source of water in a local water supply plan prepared pursuant to G.S. 143-355(l).

e. Each county in the State located in whole or in part of the receiving river basin.

(3) By giving notice by first-class mail or electronic mail to each of the following:

a. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the source river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

b. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the receiving river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

c. The governing body of any public water supply system that withdraws water upstream or downstream from the withdrawal point of the proposed transfer.

d. If any portion of the source or receiving river basins is located in another state, all state water management or use agencies, environmental protection agencies, and the office of the governor in that state upstream or downstream from the withdrawal point of the proposed transfer.

e. All persons who have registered a water withdrawal or transfer from the proposed source river basin under this Part or under similar law in an another state.

f. All persons who hold a certificate for a transfer of water from the proposed source river basin under this Part or under similar law in an another state.

g. All persons who hold a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit for a discharge of 100,000 gallons per day or more upstream or downstream from the proposed point of withdrawal.

h. To any other person who submits to the applicant a written request to receive all notices relating to the petition.

(d) Environmental Documents. — The definitions set out in G.S. 113A-9 apply to this section. The Department shall conduct a study of the environmental impacts of any proposed transfer of water for which a certificate is required under this section. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. An environmental assessment shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes; except that an environmental impact statement shall be prepared for every proposed transfer of water from one major river basin to another for which a certificate is required under this section. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes. An environmental impact statement prepared pursuant to this subsection shall include all of the following:

(1) A comprehensive analysis of the impacts that would occur in the source river basin and the receiving river basin if the petition for a certificate is granted.
(2) An evaluation of alternatives to the proposed interbasin transfer, including water supply sources that do not require an interbasin transfer and use of water conservation measures.
(3) A description of measures to mitigate any adverse impacts that may arise from the proposed interbasin transfer.

(e) Public Hearing on the Draft Environmental Document. — The Commission shall hold a public hearing on the draft environmental document for a proposed interbasin transfer after giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate where a copy of the environmental document can be reviewed and the procedure to be followed by anyone wishing to submit written comments and questions on the environmental document. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The Commission shall accept written comment on the draft environmental documents for a minimum of 30 days following the last public hearing.

(f) Determination of Adequacy of Environmental Document. — The Commission shall not act on any petition for an interbasin transfer until the Commission has determined that the environmental document is complete and adequate. A decision on the adequacy of the environmental document is subject to review in a contested case on the decision of the Commission to issue or deny a certificate under this section.

(g) Petition. — An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include all of the following:

(1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.
(2) A description of all the proposed consumptive and nonconsumptive uses of the water to be transferred.
(3) A description of the water quality of the source river and receiving river, including information on aquatic habitat for rare, threatened, and endangered species; in-stream flow data for segments of the

source and receiving rivers that may be affected by the transfer; and any waters that are impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).

(4) A description of the water conservation measures used by the applicant at the time of the petition and any additional water conservation measures that the applicant will implement if the certificate is granted.

(5) A description of all sources of water within the receiving river basin, including surface water impoundments, groundwater wells, reinjection storage, and purchase of water from another source within the river basin, that is a practicable alternative to the proposed transfer that would meet the applicant's water supply needs. The description of water sources shall include sources available at the time of the petition for a certificate and any planned or potential water sources.

(6) A description of water transfers and withdrawals registered under G.S. 143-215.22H or included in a local water supply plan prepared pursuant to G.S. 143-355(l) from the source river basin, including transfers and withdrawals at the time of the petition for a certificate and any planned or reasonably foreseeable transfers or withdrawals by a public water system with service area located within the source river basin.

(7) A demonstration that the proposed transfer, if added to all other transfers and withdrawals required to be registered under G.S. 143-215.22H or included in any local water supply plan prepared by a public water system with service area located within the source basin pursuant to G.S. 143-355(l) from the source river basin at the time of the petition for a certificate, would not reduce the amount of water available for use in the source river basin to a degree that would impair existing uses, pursuant to the antidegradation policy set out in 40 Code of Federal Regulation § 131.12 (Antidegradation Policy)(1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto, or existing and planned consumptive and nonconsumptive uses of the water in the source river basin. If the proposed transfer would impact a reservoir within the source river basin, the demonstration must include a finding that the transfer would not result in a water level in the reservoir that is inadequate to support existing uses of the reservoir, including recreational uses.

(8) The applicant's future water supply needs and the present and reasonably foreseeable future water supply needs for public water systems with service area located within the source river basin. The analysis of future water supply needs shall include agricultural, recreational, and industrial uses, and electric power generation. Local water supply plans prepared pursuant to G.S. 143-355(l) for water systems with service area located within the source river basin shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems.

(9) The applicant's water supply plan prepared pursuant to G.S. 143-355(l). If the applicant's water supply plan is more than two years old at the time of the petition, then the applicant shall include with the petition an updated water supply plan.

(10) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(h) Settlement Discussions. — Upon the request of the applicant, any interested party, or the Department, or upon its own motion, the Commission may appoint a mediation officer. The mediation officer may be a member of the Commission, an employee of the Department, or a neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section. The mediation officer shall make a reasonable effort to initiate settlement discussions between the applicant and all other interested parties. Evidence of statements made and conduct that occurs in a settlement discussion conducted under this subsection, whether attributable to a party, a mediation officer, or other person shall not be subject to discovery and shall be inadmissible in any subsequent proceeding on the petition for a certificate. The Commission may adopt rules to govern the conduct of the mediation process.

(i) Draft Determination. — Within 90 days after the Commission determines that the environmental document prepared in accordance with subsection (d) of this section is adequate or the applicant submits its petition for a certificate, whichever occurs later, the Commission shall issue a draft determination on whether to grant the certificate. The draft determination shall be based on the criteria set out in this section and shall include the conditions and limitations, findings of fact, and conclusions of law that would be required in a final determination. Notice of the draft determination shall be given as provided in subsection (c) of this section.

(j) Public Hearing on the Draft Determination. — Within 60 days of the issuance of the draft determination as provided in subsection (i) of this section, the Commission shall hold public hearings on the draft determination. At least one hearing shall be held in the affected area of the source river basin, and at least one hearing shall be held in the affected area of the receiving river basin. In determining whether more than one public hearing should be held within either the source or receiving river basins, the Commission shall consider the differing or conflicting interests that may exist within the river basins, including the interests of both upstream and downstream parties potentially affected by the proposed transfer. The public hearings shall be conducted by one or more hearing officers appointed by the Chair of the Commission. The hearing officers may be members of the Commission or employees of the Department. The Commission shall give at least 30 days' written notice of the public hearing as provided in subsection (c) of this section. The Commission shall accept written comment on the draft determination for a minimum of 30 days following the last public hearing. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer.

(k) Final Determination: Factors to be Considered. — In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact and conclusions of law with regard to each item:

(1) The necessity and reasonableness of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans for public water systems with service area located within the source river basin prepared pursuant to G.S. 143-355(l) shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems. Information on projected future water needs for public water systems with service area located within the source river basin that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the source river basin.

(3) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the petition for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan for public water systems with service area located within the source river basin that has been submitted to the Department in accordance with G.S. 143-355(l).

(4) The present and reasonably foreseeable future beneficial and detrimental effects on the receiving river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans prepared pursuant to G.S. 143-355(l) that affect the receiving river basin shall be used to evaluate the projected future water needs in the receiving river basin that will be met by public water systems. Information on projected future water needs that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the receiving river basin.

(5) The availability of reasonable alternatives to the proposed transfer, including the potential capacity of alternative sources of water, the potential of each alternative to reduce the amount of or avoid the proposed transfer, probable costs, and environmental impacts. In considering alternatives, the Commission is not limited to consideration of alternatives that have been proposed, studied, or considered by the applicant. The determination shall include a specific finding as to why the applicant's need for water cannot be satisfied by alternatives within the receiving basin, including unused capacity under a transfer for which a certificate is in effect or that is otherwise authorized by law at the time the applicant submits the petition. The determination shall consider the extent to which access to potential sources of surface water or groundwater within the receiving river basin is no longer available due to depletion, contamination, or the declaration of a capacity use area under Part 2 of Article 21 of Chapter 143 of the General Statutes. The determination shall consider the feasibility of the applicant's purchase of water from other water suppliers within the receiving basin and of the transfer of water from another sub-basin within the receiving major river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the Commission's determination as to reasonable alternatives shall give preference to alternatives that would involve a transfer from one sub-basin to another within the major receiving river basin over alternatives that would involve a transfer from one major river basin to another major river basin.

(6) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(7) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(8) Whether the service area of the applicant is located in both the source river basin and the receiving river basin.

(9) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(*l*) Final Determination: Information to be Considered. — In determining whether a certificate may be issued for the transfer, the Commission shall consider all of the following sources of information:

(1) The petition.

(2) The environmental document prepared pursuant to subsection (d) of this section.

(3) All oral and written comment and all accompanying materials or evidence submitted pursuant to subsections (e) and (j) of this section.

(4) Information developed by or available to the Department on the water quality of the source river basin and the receiving river basin, including waters that are identified as impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject to a total maximum daily load (TMDL) limit under subsections (d) and (e) of section 303 of the federal Clean Water Act, or that would have their assimilative capacity impaired if the certificate is issued.

(5) Any other information that the Commission determines to be relevant and useful.

(m) Final Determination: Burden and Standard of Proof; Specific Findings. — The Commission shall grant a certificate for a water transfer if the Commission finds that the applicant has established by a preponderance of the evidence all of the following:

(1) The benefits of the proposed transfer outweigh the detriments of the proposed transfer. In making this determination, the Commission shall be guided by the approved environmental document and the policy set out in subsection (t) of this section.

(2) The detriments have been or will be mitigated to the maximum degree practicable.

(3) The amount of the transfer does not exceed the amount of the projected shortfall under the applicant's water supply plan after first taking into account all other sources of water that are available to the applicant.

(4) There are no reasonable alternatives to the proposed transfer.

(n) Final Determination: Certificate Conditions and Limitations. — The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may impose any conditions or limitations on a certificate that the Commission finds necessary to achieve the purposes of this Part including a limit on the period for which the certificate is valid. The conditions and limitations shall include any mitigation measures proposed by the applicant to minimize any detrimental effects within the source and receiving river basins. In addition, the certificate shall require all of the following conditions and limitations:

(1) A water conservation plan that specifies the water conservation measures that will be implemented by the applicant in the receiving river basin to ensure the efficient use of the transferred water. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the water conservation plan shall provide for the mandatory implementation of water conservation measures by the applicant that equal or exceed the most stringent water conservation plan implemented by a community water system, as defined in G.S. 143-355(l), that withdraws water from the source river basin.

(2) A drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions or other emergencies that occur within the source river basin. Except in circumstances of technical or economic infeasibility or adverse

environmental impact, this drought management plan shall include mandatory reductions in the permitted amount of the transfer based on the severity and duration of a drought occurring within the source river basin and shall provide for the mandatory implementation of a drought management plan by the applicant that equals or exceeds the most stringent water conservation plan implemented by a community water system, as defined in G.S. 143-355(*l*), that withdraws water from the source river basin.

(3) The maximum amount of water that may be transferred on a daily basis, and methods or devices required to be installed and operated that measure the amount of water that is transferred.

(4) A provision that the Commission may amend a certificate to reduce the maximum amount of water authorized to be transferred whenever it appears that an alternative source of water is available to the certificate holder from within the receiving river basin, including, but not limited to, the purchase of water from another water supplier within the receiving basin or to the transfer of water from another sub-basin within the receiving major river basin.

(5) A provision that the Commission shall amend the certificate to reduce the maximum amount of water authorized to be transferred if the Commission finds that the applicant's current projected water needs are significantly less than the applicant's projected water needs at the time the certificate was granted.

(6) A requirement that the certificate holder report the quantity of water transferred during each calendar quarter. The report required by this subdivision shall be submitted to the Commission no later than 30 days after the end of the quarter.

(7) Except as provided in this subdivision, a provision that the applicant will not resell the water that would be transferred pursuant to the certificate to another public water supply system. This limitation shall not apply in the case of a proposed resale or transfer among public water supply systems within the receiving river basin as part of an interlocal agreement or other regional water supply arrangement, provided that each participant in the interlocal agreement or regional water supply arrangement is a co-applicant for the certificate and will be subject to all the terms, conditions, and limitations made applicable to any lead or primary applicant.

(o) Administrative and Judicial Review. — Administrative and judicial review of a final decision by the Commission on a petition for a certificate under this section shall be governed by Chapter 150B of the General Statutes.

(p) Certain Preexisting Transfers. — In cases where an applicant requests approval to increase a transfer that existed on 1 July 1993, the Commission may approve or disapprove only the amount of the increase. If the Commission approves the increase, the certificate shall be issued for the amount of the preexisting transfer plus any increase approved by the Commission. A certificate for a transfer approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part. A certificate for the increase of a preexisting transfer shall contain all of the conditions and limitations required by subsection (m) of this section.

(q) Emergency Transfers. — In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health, safety, or welfare requires a transfer of water, the Secretary of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary shall consult with those parties listed in subdivision (3) of subsection (c) of this section that are likely to be affected by the proposed transfer. However, the Secretary shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions of law in approving a temporary transfer under this subsection. If the Secretary approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary based on demonstrated need as set forth in this subsection.

(r) Relationship to Federal Law. — The substantive restrictions, conditions, and limitations upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government. This section shall govern the transfer of water from one river basin to another unless preempted by federal law.

(s) Planning Requirements. — When any transfer for which a certificate was issued under this section equals or exceeds eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S.143-355(*l*). When the transfer equals or exceeds ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(t) Statement of Policy. — It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. It is the public policy of this State that the reasonably foreseeable future water needs of a public water system with its service area located primarily in the receiving river basin are subordinate to the reasonably foreseeable future water needs of a public water system with its service area located primarily in the source river basin. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto.

(u) Renewal of Certificate. — A petition to extend or renew a certificate shall be treated as a new petition. (1993, c. 348, s. 1; 1997-443, ss. 11A.119(a), 15.48(c); 1997-524, s. 1; 1998-168, s. 4; 2001-474, s. 28; 2007-484, s. 43.7C; 2007-518, s. 3; 2008-125, s. 1; 2008-198, s. 11.5.)

Allocation of Surface Water Resources Study — Session Laws 2007-518, s. 1(a), as amended by Session Laws 2008-10, s. 1, provides: "The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall study the allocation of surface water resources and their availability and maintenance in the State, including issues related to the transfer of water from one river basin to another, the withdrawal of water for consumptive use, and the accuracy and tolerance of equipment used to measure the flow of water transferred from one river basin to another river basin. The Commission shall evaluate the benefits of establishing formal and informal procedures for negotiating transfers of water from one river basin to another. The Commission shall also study and recommend measures to: (i) ensure that the purposes of the Regional Water Supply Planning Act of 1971, as set out in G.S. 162A-21, are fulfilled; (ii) provide for a comprehensive system for regulating surface water withdrawals for consumptive and nonconsumptive uses; (iii) provide for the establishment of a statewide plan for water resources development projects; (iv) provide for adequate resources for the Department so that it may develop and implement a comprehensive approach to water resources management; (v) ensure that all State laws regulating water resources are consistent with and fully integrated into the comprehensive system for regulating surface water withdrawals and the statewide plan for water resources development projects; and (vi) ensure that potential interstate conflicts related to water resources are avoided or minimized. In the conduct of this study, the Environmental Review Commission may employ independent consultants as provided in G.S. 120-32.02 and G.S. 120-70.44. The Environmental Review Commission may submit interim reports to the 2008 and 2009 regular sessions of the General Assembly and shall submit a final report of its findings and recommendations, including any legislative proposals, to the General Assembly on or before 1 October 2010."

Session Laws 2008-125, s. 2, effective July 28, 2008, provides: "As a part of the study by the Environmental Review Commission of the allocation of water resources in this State pursuant to subsection (a) of Section 1 of S.L. 2007-518, the Environmental Review Commission shall study the delineation of major river basins and subbasins within the State. The Commission shall determine whether the definition of 'river basin' set out in G.S. 143-215.22G and the accompanying map should be revised. The Commission shall report its findings and recommendations as provided in subsection (a) of Section 1 of S.L. 2007-518, as amended."

Session Laws 2008-143, s. 6, provides: "The Environmental Review Commission, as part of its ongoing study of the allocation of water resources in the State required by Section 1 of S.L. 2007-518, shall study issues related to increasing water supply, including issues related to reservoir construction and State laws and rules governing reservoir construction. The Environmental Review Commission shall report its findings and recommendations, including any legislative proposals, to the General Assembly as provided by Section 1 of S.L. 2007-518, as amended."

Editor's Note. — This section was amended by Session Laws 2008-198, s. 11.5, in the coded bill drafting format provided by G.S. 120-20.1. In sub-subdivisions e. and f. of subdivision (c)(3), the word "an" that now appears preceding "another state" was not struck through. Sub-subdivisions e. and f. of subdivision (c)(3) are set out above as amended by Session Laws 2008-198, s. 11.5.

Session Laws 2008-198, s. 11.5, was contingent on House Bill 821 (Session Laws 2008-125) becoming law, which it did.

Effect of Amendments. — Session Laws 2008-125, s. 1, effective July 28, 2008, rewrote subdivision (c)(2)b.; deleted "or in an adjacent state" following "in this State" in subdivision (c)(2)c.; in subdivisions (c)(3)a. and (c)(3)b., deleted "adjacent" preceding "state" and added "and that also falls ....subdivision (2) of this subsection" at the end; and substituted "another" for "an adjacent" in subdivision (c)(3)d.

Session Laws 2008-198, s. 11.5, effective August 8, 2008, rewrote subdivision (c)(2)b; substituted "that" for "each adjacent" in subdivision (c)(3)d; and substituted "another" for "adjacent" in subdivisions (c)(3)e and (c)(3)f.

Part 6. Floodplain Regulation.

§ 143-215.56A. Floodplain Mapping Fund.

The Floodplain Mapping Fund is established as a special revenue fund. The Fund consists of the fees credited to it under G.S. 161-11.4. Revenue in the fund may be used only to offset the Department's cost in preparing floodplain maps and performing its other duties under this Part. (2008-107, s. 29.7(c).)

Editor's Note. — Session Laws 2008-107, s. 29.7(d), made this section effective October 1, 2008, and applicable to deeds of trust and mortgages registered or filed on or after that date.

The reference in this section to G.S. 161-11.4 has been substituted for G.S. 161-11.3 at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Part 9. Nonpoint Source Pollution Control Program.

§ 143-215.74. Agriculture cost share program.

Agricultural Drought Response Cost Share Program. — Session Laws 2008-107, s. 12.4, provides: "(a) Agricultural Drought Response Cost Share Program. — The Agricultural Drought Response Cost Share Program is established. The Program shall provide cost share funds to assist North Carolina farmers who suffered damage from the severe and extreme drought conditions in North Carolina in 2007. These cost share funds shall be used to assist farmers with the following projects:

"(1) To redrill damaged wells or to drill new wells to be used as a water supply for livestock or for irrigation.

"(2) To renovate damaged or inadequate farm ponds or construct new farm ponds to be used as a water supply for livestock or for irrigation.

"(3) To renovate pastures depleted by the 2007 drought.

"(b) Program Administration. — The Program shall be implemented and supervised by the Soil and Water Conservation Commission through the Agriculture Cost Share Program for Nonpoint Source Pollution Control. The Commission shall administer this Program as provided in this section and in Part 9 of Article 21 of Chapter 143 of the General Statutes.

"(c) Program Functions. — Under the Agricultural Drought Response Cost Share Program, the Division shall:

"(1) Within funds available for this Program, provide cost share funds subject to all of the following limitations and requirements:

"a. Except as provided in G.S. 143-215.74(b)(9), State funding shall be limited to:

"1. Seventy-five percent (75%) of the average cost for each project with the assisted person providing twenty-five percent (25%) of the project cost, which may include in-kind support of the project.

"2. A maximum of seventy-five thousand dollars ($75,000) per year to each applicant.

"b. Applicants shall be limited to farmers who have an adjusted gross income in each of the previous two years that is at or below two hundred fifty thousand dollars ($250,000), unless at least seventy-five percent (75%) of this adjusted gross income is derived directly from farming, ranching, or forestry operations.

"c. To be eligible for cost share funds under subdivision (1) or subdivision (2) of subsection (a) of this section, applicants must demonstrate that their existing water supplies are insufficient to provide reliable water to meet current needs for livestock watering or irrigation.

"d. Applicants may apply for cost share funds for projects under subsection (a) of this section that were installed as of August 1, 2007, so long as the costs of installation are documented to the satisfaction of the Commission.

"e. The requirements and limitations under subdivisions (1), (2), (5), and (8) of subsection (b) of G.S. 143-215.74 do not apply. All other limitations and requirements set out in Part 9 of Article 21 of Chapter 143 of the General Statutes, as modified by this section, apply.

"(2) Establish criteria to prioritize the redrilling of damaged wells and the drilling of new wells, the renovation of damaged or inadequate farm ponds and the construction of new farm ponds, and the renovation of pastures depleted by the drought.

"(3) Establish criteria for the selection of applicants who are eligible for participation in the Program.

"(4) Develop a process for soliciting and reviewing applications and for selecting farmers to participate in the Program.

"(5) Investigate and pursue other funding sources to supplement State funds, including federal, local, and private funding sources.

"(6) Provide technical assistance to participating persons to assist with the projects that are eligible for cost share funds under subsection (a) of this section and to facilitate the timely transfer of technology among participating persons.

"(d) Report. — No later than 31 January of each year, the Division shall prepare a comprehensive report on the implementation of subsections (a) through (c) of this section. The report shall be submitted to the Environmental Review Commission as a part of the report required by G.S. 143-215.74(e). The first report required by this subsection shall be submitted to the Environmental Review Commission no later than 31 January 2009.

"(e) Program Funds. — The Soil and Water Conservation Commission may use up to one hundred fifteen thousand dollars ($115,000) of the funds appropriated in this act to the Department of Environment and Natural Resources for the 2008-2009 fiscal year to be used for the Agricultural Drought Response Cost Share Program for the Division of Soil and Water Conservation and for the Soil and Water Conservation Districts for the costs of providing engineering assistance, providing technical assistance, and administering the Program. Further, twenty-five percent (25%) of the remaining funds shall not be allocated during the initial funding cycle, but shall be retained to be allocated by the Commission consistent with the limitations under this section, for the purposes under this section, and to address future drought emergencies or to allocate to farmers who received cost share funds under this section who need additional funds to achieve the purpose of the initial cost share disbursement."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring

during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 21A.

Oil Pollution and Hazardous Substances Control.

Part 1. General Provisions.

§ 143-215.77. Definitions.

CASE NOTES

Control Not Shown. — Trial court properly granted a city's motion for summary judgment regarding administrators' claim that it violated G.S. ch. 143 because the city obtained an easement across certain property to construct and maintain a waterline that connected its water system to another city's water system, and at no time was the city using, transferring, storing, or transporting oil or other hazardous substances through its easement. Michael v. Huffman Oil Co., — N.C. App. —, 661 S.E.2d 1, 2008 N.C. App. LEXIS 823 (2008).

Applied in Ellison v. Gambill Oil Co., 186 N.C. App. 167, 650 S.E.2d 819, 2007 N.C. App. LEXIS 2123 (2007).

Part 2. Oil Discharge Controls.

§ 143-215.83. Discharges.

CASE NOTES

Refusal to Charge on Third Party Exception Was Error. — Refusal to charge the jury on the G.S. 143-215.83(b)(2)(d) third party exception to the strict liability provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act was error because there was sufficient evidence to allow a reasonable inference that the actions of a third party installer and repairer caused the gasoline discharge at issue; the exception applied to an act or omission of a third party, whether or not such was negligent, and thus an instruction to the third party's negligence did not correctly convey the exception. There was no precedent showing a duty to affirmatively plead the third-party exception. Ellison v. Gambill Oil Co., 186 N.C. App. 167, 650 S.E.2d 819, 2007 N.C. App. LEXIS 2123 (2007).

§ 143-215.84. Removal of prohibited discharges.

Editor's Note. —

Session Laws 2008-195, s. 7, effective August 8, 2008, and expiring September 1, 2014, established a pilot program to evaluate the use of site-specific standards for cleanup of discharges or releases of petroleum from underground storage tanks. See note at G.S. 143-215.94A, 143-215.94T and 143-215.94V.

§ 143-215.93. Liability for damage caused.

CASE NOTES

Liability Not Shown. —

Where plaintiffs alleged that defendants were liable for contamination of wells, defendants were entitled to summary judgment as to the personal injury claims because (1) causes of action for increased risk of serious disease, invasion of personal autonomy, and instilling of fear of cancer or other deadly disease were not recognized, and (2) plaintiffs produced no evidence that any plaintiff suffered from or was diagnosed with or treated for a severe and disabling emotional or mental condition. Curl v. Am. Multimedia, Inc., — N.C. App. —, 654 S.E.2d 76, 2007 N.C. App. LEXIS 2558 (2007).

Summary Judgment Upheld. —

Trial court properly granted a city's motion for summary judgment regarding administrators' claim that it violated G.S. ch. 143 because the city obtained an easement across certain property to construct and maintain a waterline that connected its water system to another city's water system, and at no time was the city using, transferring, storing, or transporting oil or other hazardous substances through its easement. Michael v. Huffman Oil Co., — N.C. App. —, 661 S.E.2d 1, 2008 N.C. App. LEXIS 823 (2008).

Failure to Instruct on Third Party Exception Was Error. — Refusal to charge the jury on the G.S. 143-215.83(b)(2)(d) third party exception to the strict liability provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act was error because there was sufficient evidence to allow a reasonable inference that the actions of a third party installer and repairer caused the gasoline discharge at issue; the exception applied to an act or omission of a third party, whether or not such was negligent, and thus an instruction to the third party's negligence did not correctly convey the exception. There was no precedent showing a duty to affirmatively plead the third-party exception. Ellison v. Gambill Oil Co., 186 N.C. App. 167, 650 S.E.2d 819, 2007 N.C. App. LEXIS 2123 (2007).

Part 2A. Leaking Petroleum Underground Storage Tank Cleanup.

§ 143-215.94A. Definitions.

Pilot Program to Evaluate the Use of Site-Specific Cleanup Standards. — Session Laws 2008-195, s. 7, effective August 8, 2008, and expiring September 1, 2014, provides: "(a) The definitions set out in G.S. 143-215.94A apply to this section. As used in this section, 'Department' means the Department of Environment and Natural Resources and, with respect to any power or duty assigned to the Environmental Management Commission under Article 21A of Chapter 143 of the General Statutes, includes the Environmental Management Commission. As used in this section, 'site-specific cleanup standards' means standards developed using the methodology described in the Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites adopted by the American Society for Testing and Materials (ASTM) as E1739-95(2002).

"(b) The Department shall establish a pilot program to evaluate the use of site-specific cleanup standards for the cleanup of discharges or releases of petroleum from underground storage tanks as an alternative to the use of the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0400. The purpose of the pilot program is to determine the extent to which the use of site-specific standards would provide effective protection of public health, safety, and the environment in a cost-effective manner and at a lower overall cost as compared with the use of the risk-based standards set out in 15A NCAC 2L.0400. The pilot program shall apply only to discharges or releases that are classified as intermediate risk under 15A NCAC 2L.0400(d). The pilot program shall evaluate the use of site-specific standards in the cleanup of contamination that results from a discharge or release of petroleum from: (i) an underground storage tank; and (ii) an underground storage tank that is commingled with petroleum contamination from a source of contamination other than an underground storage tank, as provided in G.S. 143-215.94V(h).

"(c) Participation in the pilot program shall be at the election of the owner, operator, or landowner. To participate in the pilot program, an owner, operator, or landowner shall perform a site-specific risk assessment and submit the assessment to the Department. If the Department determines that the use of site-specific cleanup standards will provide effective protection of public health, safety, and the environment, the Department shall set site-specific soil and groundwater cleanup standards for the discharge or release. These site-specific standards shall apply in lieu of the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0400.

"(d) If soil and groundwater contamination from a discharge or release is no greater than the site-specific soil and groundwater cleanup standards set by the Department, the Department shall notify an owner, operator, or landowner that no cleanup, further cleanup, or further action will be required. If soil and groundwater contamination from a discharge or release is greater than the site-specific soil and groundwater cleanup standards set by the Department, the owner, operator, or landowner shall submit a corrective action plan to achieve the standards. The Department may require the owner, operator, or landowner to evaluate the impact of the site-specific cleanup standards on public health, safety, and the environment through use of an appropriate model. The Department shall not set site-specific soil and groundwater cleanup standards for the discharge or release that allow for contamination in excess of unrestricted use standards, as defined in G.S. 143B-279.9, on any real property that is not subject to land-use restrictions under G.S. 143B-279.9 and recordation under G.S. 143B-279.11.

"(e) Except as provided in this section, the provisions of Part 2A and Part 2B of Article 21A of Chapter 143 of the General Statutes apply to this section.

"(f) The Department shall annually report to the Environmental Review Commission on the number of site-specific risk assessments submitted to the Department under the pilot program, the disposition of those submissions, and, for any submissions for which site-specific soil and groundwater cleanup standards are not set, the basis for the decision not to set site-specific cleanup standards. The report shall include a comparison of assessment and corrective action of discharges or releases under the pilot program to assessment and corrective action of intermediate risk discharges or releases pursuant to the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0400. The comparison shall include all of the following:

"(1) The costs associated with investigation, assessment, initial response, abatement, analysis of risk, and development and implementation of a corrective action plan.

"(2) The immediate and long-term impacts on public health, safety, and the environment.

"(3) The need for and use of land-use restrictions as part of the corrective action plan.

"(4) The extent to which corrective action addresses vapor intrusion.

"(g) The Department shall submit the first report required by subsection (f) of this section on or before 1 September 2009. The Department shall include in the report due on or before 1 September 2013 any recommendations, including legislative proposals, based on the findings of the pilot program."

Reclassification of Site to Lower Risk Classification. — Session Laws 2008-195, s. 8, effective August 8, 2008, and expiring September 1, 2014, provides: "(a) The definitions set out in subsection (a) of Section 7 of this act apply to this section. It is the policy of the State that a discharge or release be reclassified as low risk if, based on site-specific cleanup standards, investigation, assessment, initial response, abatement, risk-based corrective action, or other corrective action, the Department determines that the discharge or release poses no significant risk to human health or the environment. An owner, operator, or landowner may request that a discharge or release be reclassified to a lower risk classification. If the Department denies a request to reclassify a discharge or release to a lower risk classification, the owner, operator, or landowner may file a petition for a contested case hearing as provided in Article 3 of Chapter 150B of the General Statutes.

"(b) The Department shall report on or before 1 September of each year to the Environmental Review Commission on the number of sites for which reclassification was requested based on site-specific information and the disposition of each request. The Department shall submit the first report required by this section on or before 1 September 2009."

§ 143-215.94B. Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(a) There is established under the control and direction of the Department the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Commercial Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, other monies paid to it or recovered on behalf of the Commercial Fund, and fees paid pursuant to this Part.

(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

(1) For discharges or releases discovered or reported between 30 June 1988 and 31 December 1991 inclusive, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of fifty thousand dollars ($50,000) per occurrence.

(2) For discharges or releases discovered on or after 1 January 1992 and reported between 1 January 1992 and 31 December 1993 inclusive,

the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) per occurrence.

(2a) For discharges or releases discovered and reported on or after 1 January 1994 and prior to 1 January 1995, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) if the owner or operator (i) notifies the Department prior to 1 January 1994 of its intent to permanently close the tank in accordance with applicable regulations or to upgrade the tank to meet the requirements that existing underground storage tanks must meet by 22 December 1998, (ii) commences closure or upgrade of the tank prior to 1 July 1994, and (iii) completes closure or upgrade of the tank prior to 1 January 1995.

(3) For discharges or releases reported on or after 1 January 1994, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) if, prior to the discharge or release, the commercial underground storage tank from which the discharge or release occurred met the performance standards applicable to tanks installed after 22 December 1988 or met the requirements that existing underground storage tanks must meet by 22 December 1998.

(4) For discharges or releases reported on or after 1 January 1994 from a commercial underground storage tank that does not qualify under subdivision (2a) of this subsection or does not meet the standards in subdivision (3) of this subsection, sixty percent (60%) of the costs per occurrence of the cleanup of environmental damage as required by G.S. 143-215.94E(a) that exceeds twenty thousand dollars ($20,000) but is not more than one hundred fifty-seven thousand five hundred dollars ($157,500) and one hundred percent (100%) of the costs above this amount, up to the limits established in this section.

(5) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars ($100,000) per occurrence.

(6) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision.

(7) Recordation of residual petroleum as required by G.S. 143B-279.11 if the Commercial Fund is responsible for the payment of costs under subdivisions (1) through (4) of this subsection.

(b1) In the event that two or more discharges or releases at any one facility, the first of which was discovered or reported on or after 30 June 1988, result in more than one plume of soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the payment of the costs of the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount shall be calculated as follows:

(1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars ($75,000). For purposes of this subsection, two or more discharges or releases that result in a single plume of soil, surface water, or

groundwater contamination shall be considered as a single discharge or release.

(2) The multiple discharge amount shall be the lesser of:
  a. The sum of all the costs determined as set out in subdivision (1) of this subsection; or
  b. The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1½).

(b2) In the event that the aggregate costs per occurrence described in subsection (b) or (b1) of this section exceed one million dollars ($1,000,000), the Commercial Fund shall be used for the payment of eighty percent (80%) of the costs in excess of one million dollars ($1,000,000) up to a maximum of one million five hundred thousand dollars ($1,500,000). The Department shall not pay or reimburse costs under this subsection unless the owner, operator, or landowner eligible for reimbursement under G.S. 143-215.94E(b1) submits proof that the owner, operator, or landowner eligible for reimbursement under G.S. 143-215.94E(b1) has paid at least twenty percent (20%) of the costs for which reimbursement is sought.

(b3) For purposes of subsections (b) and (b1) of this section, the cleanup of environmental damage includes connection of a third party to a public water system if the Department determines that connection of the third party to a public water system is a cost-effective measure, when compared to other available measures, to reduce risk to human health or the environment. A payment or reimbursement under this subsection is subject to the requirements and limitations of this section. This subsection shall not be construed to limit any right or remedy available to a third party under any other provision of law. This subsection shall not be construed to require a third party to connect to a public water system. Except as provided by this subsection, connection to a public water system does not constitute cleanup under Part 2 of this Article, G.S. 143-215.94E, G.S. 143-215.94V, any other applicable statute, or at common law.

(b4) The Commercial Fund shall pay any claim made after 1 September 2001 for compensation to third parties pursuant to subdivision (5) of subsection (b) of this section only if the owner, operator, or other party responsible for the discharge or release has complied with the requirements of G.S. 143B-279.9 and G.S. 143B-279.11, unless compliance is prohibited by another provision of law.

(c) The Commercial Fund is to be available on an occurrence basis, without regard to number of occurrences associated with tanks owned or operated by the same owner or operator.

(d) The Commercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or vehicle.

(2) The removal or replacement of any tank, pipe, fitting or related equipment.

(3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline.

(4) Costs intended to be paid by the Noncommercial Fund.

(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.

(6) Costs paid or reimbursed by or from any source other than the Commercial Fund, including but not limited to, any payment or reimbursement made under a contract of insurance.

(7) Costs incurred as a result of the cleanup of environmental damage to groundwater to a more protective standard than the risk-based

standard required by the Department unless the cleanup of environmental damage to groundwater to a more protective standard is necessary to resolve a claim for compensation by a third party for property damage.

(8) Costs in excess of those required to achieve the most cost-effective cleanup.

(e) The Commercial Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(f) **(Expires October 1, 2011)** During each fiscal year, the Department may use up to two million five hundred thousand dollars ($2,500,000) of the funds in the Commercial Fund for performance-based cleanups as provided in this subsection. The Department may also use any funds that are available from any other source and that are specifically intended to be used for performance-based cleanups as provided in this section. Each performance-based cleanup shall comply with the requirements of this Part and any other provisions of law that govern the cleanup of environmental damage resulting from the discharge or release of a petroleum product from a commercial underground storage tank. The Department or any owner, operator, or landowner may contract for performance-based cleanups with environmental services firms that the Department has determined to be qualified to satisfactorily complete the work associated with a cleanup. Before the award of the contract, the environmental services firms shall secure a surety or performance bond equal to the price of the firm's services under the contract and shall demonstrate having secured the surety or performance bond to the satisfaction of the Department. The surety shall be liable on the bond obligation when the environmental services firms fail to perform as specified in the contract. A performance-based contract shall provide that cleanup will be completed within the time and for the cost stated in the contract. The Department or any owner, operator, or landowner shall select environmental services firms for performance-based cleanup through a competitive bidding process. The Commission shall adopt rules governing the competitive bidding process and any other rules necessary to implement this subsection. The rules shall establish qualifications for environmental services firms and for individuals and firms that provide engineering services as part of a contract to satisfactorily complete work associated with cleanup.

(g) The Commercial Fund may be used to support the administrative functions of the program for underground storage tanks under this Part and Part 2B of this Article up to the amounts allowed by law, which amounts may be changed from time to time. In the case of a legislated increase or decrease in salaries and benefits, the administrative allowance existing at the time of the increase or decrease shall be correspondingly increased or decreased an amount equal to the legislated increase or decrease in salaries and benefits.

(h) The Commercial Fund may be used to reimburse the owner or operator of a commercial petroleum underground storage tank for annual operating fees that were paid under protest pursuant to G.S. 143-215.94C(f) to the extent the Department has recovered the fees from the previous owner or operator from whom the annual operating fees were due. The Commercial Fund may be used only to reimburse those fees that the owner or operator paid to eliminate an unpaid annual operating fees balance that had been accrued by and was the obligation of a previous owner or operator. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 4, 16; 1991, c. 538, ss. 2, 3; 1991 (Reg. Sess., 1992), c. 817, s. 1; 1993, c. 400, s. 15; c. 402, s. 1; 1995, c. 377, s. 5; 1998-161, s. 2; 2001-384, ss. 4, 5, 8; 2001-442, s. 1; 2003-352, ss. 2, 3; 2007-323, s. 12.1(a); 2008-195, s. 11; 2008-198, s. 7(a).)

Editor's Note. —

Session Laws 2001-442, s. 7, as amended by Session Laws 2003-340, s. 2, provides: "Beginning 1 September 2003, the Secretary of Environment and Natural Resources shall submit an annual report to the Environmental Review Commission on the implementation of Sections 1 through 6 of this act [Session Laws 2001-442, ss. 1-6] as a part of the report required by G.S. 143-215.94M." Session Laws 2001-442, s. 8, provided that Session Laws 2001-442, s. 7, would expire October 1, 2006. Session Laws 2008-195, s. 11, effective retroactively to October 1, 2006, amended Session Laws 2001-442, s. 8, by extending the expiration date to October 1, 2011.

Session Laws 2001-442, s. 8, provided that s. 1 of the act, which added subsection (f) of this section, would expire October 1, 2006. Session Laws 2008-195, s. 11, effective retroactively to October 1, 2006, amended Session Laws 2001-442, s. 8, by extending the expiration date to October 1, 2011.

Session Laws 2008-107, s. 12.6, provides: "(a) There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources the sum of seven hundred ninety-one thousand six hundred fourteen dollars ($791,614) for the 2008-2009 fiscal year. Notwithstanding G.S. 143-215.94B, these funds shall be used to establish and support 11 positions within the underground storage tank program as follows:

"(1) $92,643 shall be used to establish and support one Environmental Program Supervisor II position.

"(2) $615,953 shall be used to establish and support nine Environmental Specialist positions.

"(3) $83,018 shall be used to establish and support one Environmental Engineer I position.

"(b) The positions under subsection (a) of this section shall be used to increase compliance inspection frequency for the underground storage tank program within the Department and to conduct operator training for those underground storage tank systems that are subject to regulation under Part 2A or Part 2B of Article 21A of Chapter 143 of the General Statutes. It is the intent of the General Assembly that funds for these positions under this section are recurring funds and that these funds are in addition to funds previously appropriated to the Department of Environment and Natural Resources for the 2008-2009 fiscal year."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-198, s. 7(a), effective August 8, 2008, added subsection (h).

CASE NOTES

Cited in Lancaster v. N.C. Dep't of Env't & Natural Res., Div. of Waste Mgmt., — N.C. App. —, 652 S.E.2d 359, 2007 N.C. App. LEXIS 2304 (2007).

§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.

(a) **(Effective until January 1, 2009)** For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank. The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee according to the following schedule:

(1) For each petroleum commercial underground storage tank of 3,500 gallons or less capacity — two hundred dollars ($200.00).

(2) For each petroleum commercial underground storage tank of more than 3,500 gallon capacity — three hundred dollars ($300.00).

(a) **(Effective January 1, 2009)** For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank. The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee of four-hundred twenty dollars ($420.00) for each petroleum commercial underground storage tank.

(b) **(Effective until January 1, 2009)** The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in use in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from use in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. The annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. The fee for all commercial underground storage tanks located at the same facility shall be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.

(b) **(Effective January 1, 2009)** The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. The annual

G.S. 143-215.94C(a) and (b) are set out twice. See note.

operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. The fee for all commercial underground storage tanks located at the same facility shall be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.

(c) Beginning no later than sixty days before the first due date of the annual operating fee imposed by this section, any person who deposits a petroleum product in a commercial underground storage tank that would be subject to the annual operating fee shall, at least once in each calendar year during which such deposit of a petroleum product is made, notify the owner or operator of the duty to pay the annual operating fee. The requirement to notify pursuant to this subsection does not constitute a duty owed by the person depositing a petroleum product in a commercial underground storage tank to the owner or operator and the person depositing a petroleum product in an underground storage tank shall not incur any liability to the owner or operator for failure to give notice of the duty to pay the operating fee.

(d) Repealed by Session Laws 1991, c. 538, s. 3.1.

(e) An owner or operator of a commercial underground storage tank who fails to pay an annual operating fee due under this section within 30 days of the date that the fee is due shall pay, in addition to the fee, a late penalty of five dollars ($5.00) per day per commercial underground storage tank, up to a maximum equal to the annual operating fee due. The Department may waive a late penalty in whole or in part if:

(1) The late penalty was incurred because of the late payment or nonpayment of an annual operating fee by a previous owner or operator.
(2) The late penalty was incurred because of a billing error for which the Department is responsible.
(3) Where the late penalty was incurred because the annual operating fee was not paid by the owner or operator due to inadvertence or accident.
(4) Where payment of the late penalty will prevent the owner or operator from complying with any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases.

(f) A person who becomes the owner or operator of a commercial petroleum underground storage tank may pay, under protest, unpaid annual operating fees that were the obligation of a previous owner or operator for the purpose of obtaining an operating permit for the underground storage tanks. An owner or operator who pays unpaid operating fees that were due from a previous owner or operator may request reimbursement of those fees as provided in G.S. 143-215.94B(h). In collecting unpaid annual operating fees, the Department shall diligently seek to collect unpaid annual operating fees from the person who was the owner or operator of the commercial petroleum underground storage tank at the time the fee first became due notwithstanding the fact that those fees were paid under protest as provided in this subsection. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 5, 16; 1991, c. 538, ss. 3.1, 4, 5; 1993, c. 400, s. 15; c. 402, s. 2; 1995, c. 377, s. 6; 1995 (Reg. Sess., 1996), c. 648, s. 2; 2008-195, s. 1; 2008-198, s. 7(b).)

Subsections (a) and (b) Set Out Twice. — The first versions of subsections (a) and (b) set out above are effective until January 1, 2009. The second versions of subsections (a) and (b) set out above become effective January 1, 2009.

Editor's Note. — Session Laws 2008-195, s. 12, provides: "Notwithstanding any provision of Part 2A of Article 21A of Chapter 143 of the General Statutes, the Department of Environment and Natural Resources shall annually use up to three million dollars ($3,000,000) of the increase in receipts credited to the Commercial Fund as a result of the increase in the annual operating fee set out in G.S. 143-215.94C(a), as amended by Section 1 of this act, solely for the removal of free petroleum from groundwater as a first priority and shall use the balance of these receipts to address the other concerns raised in the letter from the United States Environmental Protection Agency Region 4 Administrator to the Secretary of Environment and Natural Resources dated 19 September 2006."

Effect of Amendments. — Session Laws 2008-195, s. 1, effective January 1, 2009, in subsection (a), substituted "of four-hundred twenty dollars ($420.00) for each petroleum commercial underground storage tank" for "according to the following schedule:" and former subdivisions (a)(1) and (2), which distinguished between tanks of more than 3,500 gallon capacity and smaller tanks; and substituted "use" for "service" twice in subsection (b).

Session Laws 2008-198, s. 7(b), effective August 8, 2008, added subsection (f).

§ 143-215.94D. Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(a) There is established under the control and direction of the Department the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Noncommercial Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, or other monies paid to it or recovered on behalf of the Noncommercial Fund.

(b) The Noncommercial Fund shall be used for the payment of the costs set out in subsection (b1) of this section, up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from:

(1) Noncommercial underground storage tanks if the discharge or release meets the minimum priority criteria for corrective action established by the Department.

(2) Commercial underground storage tanks if the owner or operator cannot be identified or fails to proceed with the cleanup.

(3) Commercial underground storage tanks that were taken out of operation prior to 1 January 1974 if, at the time the discharge or release is discovered, neither the owner or operator owns or leases the lands on which the tank is located.

(4) Commercial underground storage tanks if the owner of the commercial underground storage tank is the owner only as a result of owning the land on which the commercial underground storage tank is located, the owner did not know or have reason to know that the underground storage tank was located on the property, and the land was not transferred to the owner to avoid liability for the commercial underground storage tank.

(b1) The Noncommercial Fund shall be used for the payment of the costs of:

(1) The cleanup of environmental damage as required by G.S. 143-215.94E(a).

(2) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars ($100,000) per occurrence.

(3) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision.

(4) Recordation of residual petroleum as required by G.S. 143B-279.11 if the Noncommercial Fund is responsible for the payment of costs

under subdivisions (1) through (3) of this subsection and subsection (b) of this section.

(b2) The Noncommercial Fund may be used by the Department for the payment of costs necessary to render harmless any commercial or noncommercial underground storage tank from which a discharge or release has not occurred but which poses an imminent hazard to the environment if the owner or operator cannot be identified or located, or if the owner or operator fails to take action to render harmless the underground storage tank within 90 days after having been notified of the imminent hazard posed by the underground storage tank. The Secretary may seek to recover the costs of the action from the owner or operator as provided in G.S. 143-215.94G.

(b3) For purposes of subsection (b1) of this section, the cleanup of environmental damage includes connection of a third party to a public water system if the Department determines that connection of the third party to a public water system is a cost-effective measure, when compared to other available measures, to reduce risk to human health or the environment. A payment or reimbursement under this subsection is subject to the requirements and limitations of this section. This subsection shall not be construed to limit any right or remedy available to a third party under any other provision of law. This subsection shall not be construed to require a third party to connect to a public water system. Except as provided by this subsection, connection to a public water system does not constitute cleanup under Part 2 of this Article, G.S. 143-215.94E, G.S. 143-215.94V, any other applicable statute, or at common law.

(b4) The Noncommercial Fund shall pay any claim made after 1 September 2001 for compensation to third parties pursuant to subdivision (2) of subsection (b1) of this section only if the owner, operator, or other party responsible for the discharge or release has complied with the requirements of G.S. 143B-279.9 and G.S. 143B-279.11, unless compliance is prohibited by another provision of law.

(c) The Noncommercial Fund is to be available on an occurrence basis, without regard to number of occurrences associated with tanks owned or operated by the same owner or operator.

(d) The Noncommercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or vehicle.

(2) The removal or replacement of any tank, pipe, fitting or related equipment.

(3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline.

(4) Costs intended to be paid for by the Commercial Fund.

(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.

(6) Costs paid or reimbursed by or from any source other than the Noncommercial Fund, including, but not limited to, any payment or reimbursement made under a contract of insurance.

(7) Costs incurred as a result of the cleanup of environmental damage to groundwater to a more protective standard than the risk-based standard required by the Department unless the cleanup of environmental damage to groundwater to a more protective standard is necessary to resolve a claim for compensation by a third party for property damage.

(8) Costs in excess of those required to achieve the most cost-effective cleanup.

(e) The Noncommercial Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(f) **(Expires October 1, 2011)** During each fiscal year the Department may use up to two hundred fifty thousand dollars ($250,000) of the funds in the Noncommercial Fund for performance-based cleanups as provided in this subsection. The Department may also use any funds that are available from any other source and that are specifically intended to be used for performance-based cleanups as provided in this section. Each performance-based cleanup shall comply with the requirements of this Part and any other provisions of law that govern the cleanup of environmental damage resulting from the discharge or release of a petroleum product from a noncommercial underground storage tank. The Department or any owner, operator, or landowner may contract for performance-based cleanups with environmental services firms that the Department has determined to be qualified to satisfactorily complete the work associated with a cleanup. Before the award of the contract, the environmental services firms shall secure a surety or performance bond equal to the price of the firm's services under the contract and shall demonstrate having secured the surety or performance bond to the satisfaction of the Department. The surety shall be liable on the bond obligation when the environmental services firms fail to perform as specified in the contract. A performance-based contract shall provide that cleanup will be completed within the time and for the cost stated in the contract. The Department or any owner, operator, or landowner shall select environmental services firms for performance-based cleanup through a competitive bidding process and any other rules necessary to implement this subsection.

(g) The Noncommercial Fund may be used to support the administrative functions of the program for underground storage tanks under this Part and Part 2B of this Article up to the amounts allowed by law, which amounts may be changed from time to time. In the case of a legislated increase or decrease in salaries and benefits, the administrative allowance existing at the time of the increase or decrease shall be correspondingly increased or decreased an amount equal to the legislated increase or decrease in salaries and benefits. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 6, 16; 1991, c. 538, s. 6; 1991 (Reg. Sess., 1992), c. 890, s. 17; 1993, c. 400, s. 15; 1995, c. 377, s. 7; 1998-161, ss. 3, 11(a); 2001-384, ss. 6, 7, 9; 2001-442, s. 2; 2003-352, ss. 4, 5; 2007-323, s. 12.1(b); 2008-195, s. 11.)

Editor's Note. —

Session Laws 2001-442, s. 7, as amended by Session Laws 2003-340, s. 2, provides: "Beginning 1 September 2003, the Secretary of Environment and Natural Resources shall submit an annual report to the Environmental Review Commission on the implementation of Sections 1 through 6 of this act [Session Laws 2001-442, ss. 1-6] as a part of the report required by G.S. 143-215.94M." Session Laws 2001-442, s. 8, provided that Session Laws 2001-442, s. 7, would expire October 1, 2006. Session Laws 2008-195, s. 11, effective retroactively to October 1, 2006, amended Session Laws 2001-442, s. 8, by extending the expiration date to October 1, 2011.

Session Laws 2001-442, s. 8, provided that s. 2 of the act, which added subsection (f) of this section, would expire October 1, 2006. Session Laws 2008-195, s. 11, effective retroactively to October 1, 2006, amended Session Laws 2001-442, s. 8, by extending the expiration date to October 1, 2011.

§ 143-215.94E. Rights and obligations of the owner or operator.

(a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator of the underground storage tank shall notify the Department pursuant to G.S. 143-215.85.

The owner or operator of the underground storage tank shall immediately undertake to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article.

(a1) If a spill or overfill associated with a petroleum underground storage tank results in a release of petroleum to the environment of 25 gallons or more or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately clean up the spill or overfill, report the spill or overfill to the Department within 24 hours of the spill or overfill, and begin to restore the area affected in accordance with the requirements of this Article. The owner or operator of a petroleum underground storage tank shall immediately clean up a spill or overfill of less than 25 gallons of petroleum that does not cause a sheen on nearby surface water. If a spill or overfill of less than 25 gallons of petroleum cannot be cleaned up within 24 hours of the spill or overfill or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately notify the Department.

(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in subsection (b) or (b1) of G.S. 143-215.94B that exceed the amounts for which the owner or operator is responsible under that subsection. The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2).

(b1) In the case of a discharge or release from a commercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the commercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Commercial Fund pay or reimburse the current landowner for any costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) that exceed the amounts for which the owner or operator is responsible under that subsection. The current landowner is not eligible for payment or reimbursement until the current landowner has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) for which the owner or operator is responsible. Eligibility for reimbursement under this subsection may be transferred from a current landowner who has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) to a subsequent landowner. The sum of payments from the Commercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2). This subsection shall not be construed to require a current landowner to cleanup a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. In the event that an owner or operator is subsequently identified or located, the Secretary shall seek reimbursement as provided in G.S. 143-215.94G(d). The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(c) In the case of a discharge or release from a noncommercial underground storage tank or a commercial underground storage tank eligible for the Noncommercial Fund in accordance with G.S. 143-215.94D(b), the owner or operator may elect to have the Noncommercial Fund pay or reimburse the owner or operator for the costs described in G.S. 143-215.94D(b1) up to a maximum of one million dollars ($1,000,000) per discharge or release.

(c1) In the case of a discharge or release from a noncommercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the noncommercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Noncommercial Fund pay or reimburse the current landowner for ninety percent (90%) of any costs described in subdivisions (1) and (2) of G.S. 143-215.94D(b1) that exceed five thousand dollars ($5,000). Eligibility for reimbursement under this subsection may be transferred to a subsequent landowner from a current landowner who has paid the costs for which the landowner is responsible under this subsection. The sum of payments from the Noncommercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or release. This subsection shall not be construed to require a current landowner to clean up a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(d) In any case where the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) exceed one million dollars ($1,000,000), or one million five hundred thousand dollars ($1,500,000) if G.S. 143-215.94B(b2) applies, the provisions of Article 21A of this Chapter or any other applicable statute or common law principle regarding liability shall apply for the amount in excess of one million dollars ($1,000,000) or, if G.S. 143-215.94B(b2) applies, one million five hundred thousand dollars ($1,500,000). Nothing contained in this Part shall limit or modify any liability that any party may have pursuant to Article 21A of this Chapter, any other applicable statute, or at common law.

(e) When an owner, operator, or landowner pays the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, the owner, operator, or landowner may seek reimbursement from the appropriate fund for any costs that the owner, operator, or landowner may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with the applicable subsections of this section.

(e1) The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from either the Commercial Fund or the Noncommercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30 June of the previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. 143-215.94B(b), 143-215.94B(b1), and 143-215.94D(b1).

(e2) An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis. If the Department fails to notify an owner or operator of its decision on a claim for reimbursement under this section within 90 days after the date the claim is received by the Department, the owner or operator may elect to consider the claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter 150B of the General Statutes.

(e3) The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the General Statutes. The Secretary shall make the final agency decision in a contested case proceeding under this subsection.

(e4)(1) If the owner or operator takes initial steps to collect and remove the discharge or release as required by the Department and completes the initial assessment required to determine degree of risk, the owner or operator shall not be subject to any violation or penalty for any failure to proceed with further assessment or cleanup under G.S. 143-215.84 or this section before the owner or operator is authorized to proceed with further assessment or cleanup as provided in subsection (e5) of this section. The lack of availability of funds in the Commercial Fund or the Noncommercial Fund shall not relieve an owner or operator of responsibility to immediately undertake to collect and remove the discharge or release or to conduct any assessment or cleanup ordered by the Department or be a defense against any violations and penalties issued to the owner or operator for failure to conduct required assessment or cleanup.

(2) The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a commercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the degree of risk to human health and the environment posed by the discharge or release and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk. If any of the costs of assessment and cleanup of the discharge or release from a commercial underground storage tank are eligible to be paid or reimbursed from the Commercial Fund, the Department shall also consider the availability of funds in the Commercial Fund and the order in which the discharge or release was reported in determining the schedule.

(3) The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a noncommercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the

degree of risk to human health and the environment posed by the discharge or release and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk. If any of the costs of assessment or cleanup of the discharge or release from a noncommercial underground storage tank are eligible to be paid or reimbursed from the Noncommercial Fund, the Department shall also consider the availability of funds in the Noncommercial Fund and the order in which the discharge or release was reported in determining the schedule.

(4) The Department may revise the schedules that apply to the assessment and cleanup of any discharge or release at any time based on its reassessment of any of the foregoing factors.

(e5)(1) As used in this subsection:

a. "Authorization" means a determination by the Department that a person may proceed with one or more tasks associated with the assessment or cleanup of a discharge or release from a petroleum underground storage tank. To 'authorize' means to make such a determination.

b. "Preapproval" means a determination by the Department that:

1. The nature and scope of a task is reasonable and necessary to be performed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) in order to achieve the purposes of this Part.

2. The amount estimated for the cost of a task does not exceed the amount or rate that is reasonable for that task.

(2) The Department may require an owner, operator, or landowner to obtain preapproval before proceeding with any task. The Department shall specify those tasks for which preapproval is required. The Department shall deny any request for payment or reimbursement of the cost of any task for which preapproval is required if the owner, operator, or landowner failed to obtain preapproval of the task. Preapproval of a task by the Department does not guarantee payment or reimbursement in the amount estimated for the cost of the task at the time preapproval is requested. The Department shall pay or reimburse the cost of a task only if all of the following apply:

a. The cost is eligible to be paid under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1).

b. Payment is in accordance with G.S. 143-215.94B(d) or G.S. 143-215.94D(d).

c. The Department determines that the cost is reasonable and necessary.

(3) The Commission may adopt rules governing payment or reimbursement of reasonable and necessary costs and, consistent with any rules adopted by the Commission, the Department shall develop, implement, and periodically revise a schedule of costs that the Department determines to be reasonable and necessary costs for specific tasks. Statements that specify tasks for which preapproval is required and schedules of reasonable and necessary costs for specific tasks are statements within the meaning of G.S. 150B-2(8a)g. This subsection shall not be construed to invalidate any rule of the Commission related to preapproval of tasks that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1), provided, however, that the Department may specify additional tasks for which preapproval is required.

(4) In all cases, the Department shall require an owner, operator, or landowner to submit documentation sufficient to establish that a claim is eligible to be paid or reimbursed under this Part before the Department pays or reimburses the claim.

(5) The Department shall authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund only when the task is scheduled to be performed on the basis of a priority determination pursuant to subsection (e4) of this section. The Department shall not pay or reimburse the cost of any task for which authorization is required under this subsection until the Department has preapproved and authorized the task.

(6) Except as provided in subdivisions (8) and (9) of this subsection, the Department shall not authorize any task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund unless the Department determines, based on the scope of the work to be performed and the schedule of reasonable and necessary costs, that sufficient funds will be available in the Commercial Fund or the Noncommercial Fund, whichever applies, to pay or reimburse the cost of that task within 90 days after the Department determines that the owner, operator, or landowner has submitted a claim with documentation sufficient to establish that the claim is eligible to be paid under this Part.

(7) This subsection shall not be construed to establish a cause of action against the Commission or the Department for any failure to pay or reimburse any cost within any specific period of time. This subsection shall not be construed to establish a defense to any action to enforce the requirements of either G.S. 143-215.84 or subsection (a) of this section.

(8) The Department may preapprove and authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund that has not been authorized pursuant to subdivisions (5) and (6) of this subsection if the owner, operator, or landowner specifically requests that the task be authorized and agrees that the claim for payment or reimbursement of the cost will not be paid until after the Department has paid all claims for payment or reimbursement of costs for tasks that the Department has authorized pursuant to subdivisions (5) and (6) of this subsection.

(9) The Department may preapprove and authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund that has not been authorized pursuant to subdivisions (5) and (6) of this subsection if the discharge or release creates an emergency situation. An emergency situation exists when a discharge or release of petroleum results in an imminent threat to human health or the environment. A claim for payment or reimbursement of costs for tasks that are authorized under this subdivision shall be paid or reimbursed on the same basis as tasks that are authorized under subdivisions (5) and (6) of this subsection.

(f) Repealed by Session Laws 2003-352, s. 6, effective July 27, 2003.

(f1) Any person seeking payment or reimbursement from either the Commercial Fund or the Noncommercial Fund shall certify to the Department that the costs to be paid or reimbursed by the Commercial Fund or the Noncommercial Fund are not eligible to be paid or reimbursed by or from any other source, including any contract of insurance. If any cost paid or reimbursed by the Commercial Fund or the Noncommercial Fund is eligible to be paid or reimbursed by or from another source, that cost shall not be paid from, or if paid shall be repaid to, the Commercial Fund or the Noncommercial Fund. As used in this Part, the phrase “any other source including any contract of insurance” does not include self-insurance.

(g) No owner or operator shall be reimbursed pursuant to this section, and the Department shall seek reimbursement of the appropriate fund or of the

Department for any monies disbursed from the appropriate fund or expended by the Department if any of the following apply:

(1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases.

(2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct.

(3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

(h) Subdivision (1) of subsection (g) of this section shall not be construed to limit the right of an owner or operator to contest notices of violation or orders issued by the Department. Subdivision (1) of subsection (g) of this section shall not apply to a payment or reimbursement pursuant to this section if, at the time of the discharge or release, the owner or operator holds a valid operating permit as required by G.S. 143-215.94U.

(i) Repealed by Session Laws 2005-365, s. 1, effective September 8, 2005.

(j) **(Effective January 1, 2009)** An owner, operator, or landowner shall request that the Department determine whether any of the costs of assessment and cleanup of a discharge or release from a petroleum underground storage tank are eligible to be paid or reimbursed from either the Commercial Fund or the Noncommercial Fund within one year after completion of any task that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1).

(k) **(Effective January 1, 2009)** An owner, operator, or landowner shall request payment or reimbursement from the Commercial Fund or the Noncommercial Fund for the cost of a task within one year after the completion of the task. The Department shall deny any request for payment or reimbursement of the cost of any task that would otherwise be eligible to be paid or reimbursed if the request is not received within 12 months after the later of the date on which the:

(1) Department determines that the cost is eligible to be paid or reimbursed.

(2) Task is completed. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 7, 16; 1991, c. 538, ss. 7, 22; 1991 (Reg. Sess., 1992), c. 817, s. 2; 1993, c. 400, s. 15; c. 402, s. 3; 1995, c. 377, s. 8; 1995 (Reg. Sess., 1996), c. 648, ss. 3, 4; 1998-161, ss. 4, 5, 8(a), (b), 11(b); 1998-215, s. 68; 2000-172, s. 7.1; 2003-352, ss. 6, 7; 2004-124, s. 30.10(d); 2005-365, ss. 1, 2; 2008-195, s. 2(a).)

Editor's Note. —

Session Laws 2008-195, s. 2(b), provides: "Notwithstanding G.S. 143-215.94E(k), as enacted by subsection (a) of this section, an owner, operator, or landowner shall request payment or reimbursement of the cost of any task completed prior to 1 January 2009 that is eligible to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund no later than 1 January 2010. The Department shall deny any request for payment or reimbursement of the cost of any task to which this subsection applies that is made after 1 January 2010."

Session Laws 2008-195, s. 7, effective August 8, 2008, and expiring September 1, 2014, established a pilot program to evaluate the use of site-specific standards for cleanup of discharges or releases of petroleum from underground storage tanks. See note at G.S. 143-215.94A, 143-215.94T and 143-215.94V.

Effect of Amendments. — Session Laws 2008-195, s. 2(a), effective January 1, 2009, and applicable to determinations of eligibility and requests for payments made on or after that date, added subsections (j) and (k).

CASE NOTES

Dismissal of Petition for Review Signed by Non-Attorney Agent of Corporation Erroneous. — Dismissal of petition for review of a department's decision to retract a corporate owner's eligibility for reimbursement of environmental clean-up costs was in error because, although the petition was signed by a non-attorney agent for owner, 26 N.C. Admin. Code 3.0120(e) stated that a party did not need to be represented by an attorney at administrative hearings; the term "representative" as used in G.S. 150B-23, was not coterminous with the term "attorney." Allied Envtl. Servs., PLLC v. N.C. Dep't of Envtl. & Natural Res., Div. of Waste Mgmt., — N.C. App. —, 653 S.E.2d 11, 2007 N.C. App. LEXIS 2369 (2007).

§ 143-215.94G. Authority of the Department to engage in cleanups; actions for fund reimbursement.

(a) The Department may use staff, equipment, or materials under its control or provided by other cooperating federal, State, or local agencies and may contract with any agent or contractor it deems appropriate to investigate a release, to develop and implement a cleanup plan, to provide interim alternative sources of drinking water to third parties, and to pay the initial costs for providing permanent alternative sources of drinking water to third parties, and shall pay the costs resulting from commercial underground storage tanks from the Commercial Fund and shall pay the costs resulting from noncommercial underground storage tanks from the Noncommercial Fund, whenever there is a discharge or release of petroleum from any of the following:

(1) A noncommercial underground storage tank.

(2) An underground storage tank whose owner or operator cannot be identified or located.

(3) An underground storage tank whose owner or operator fails to proceed as required by G.S. 143-215.94E(a).

(4) A commercial underground storage tank taken out of operation prior to 1 January 1974 if, when the discharge or release is discovered, neither the owner nor operator owns or leases the land on which the underground storage tank is located.

(a1) Every State agency shall provide to the Department to the maximum extent feasible such staff, equipment, and materials as may be available and useful to the development and implementation of a cleanup program.

(a2) The cost of any action authorized under subsection (a) of this section shall be paid, to the extent funds are available, from the following sources in the order listed:

(1) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks, including, but not limited to, the Leaking Underground Storage Tank Trust Fund established pursuant to 26 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).

(2) The Commercial Fund or the Noncommercial Fund.

(a3) **(Expires October 1, 2011)** The Department may implement the provisions of subsection (a) of this section as provided in G.S. 143-215.94B(f) and G.S. 143-215.94D(f).

(b) Whenever the discharge or release of a petroleum product is from a commercial underground storage tank, the Department may supervise the cleanup of environmental damage required by G.S. 143-215.94E(a). If the owner or operator elects to have the Commercial Fund reimburse or pay for any costs allowed under subsection (b) or (b1) of G.S. 143-215.94B, the Department shall require the owner or operator to submit documentation of all expenditures claimed for the purposes of establishing that the owner or operator has spent the amounts required to be paid by the owner or operator pursuant to and in accordance with G.S. 143-215.94E(b). The Department shall allow credit for all expenditures that the Department determines to be reasonable and necessary. The Department may not pay for any costs for which the Commercial Fund was established until the owner or operator has paid the amounts specified in G.S. 143-215.94E(b).

(c) The Secretary shall keep a record of all expenses incurred for the services of State personnel and for the use of the State's equipment and material.

(d) The Secretary shall seek reimbursement through any legal means available, for:

(1) Any costs not authorized to be paid from either the Commercial or the Noncommercial Fund;

(2) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank is later identified or located;

(3) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank failed to proceed as required by G.S. 143-215.94E(a);

(3a) The amounts provided for by G.S. 143-215.94B(b)(5) required to be paid by the owner or operator to third parties for the cost of providing interim alternative sources of drinking water to third parties and the initial cost of providing permanent alternative sources of drinking water to third parties;

(4) Any funds due under G.S. 143-215.94E(g); and

(5) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks.

(e) In the event that a civil action is commenced to secure reimbursement pursuant to subdivisions (1) through (4) of subsection (d) of this section, the Secretary may recover, in addition to any amount due, the costs of the action, including but not limited to reasonable attorney's fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the appropriate fund or other source from which the expenditures were made.

(f) In the event that a recovery equal to or in excess of the amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) is recovered pursuant to subdivisions (2) and (3) of subsection (d) of this section for the costs described in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1), the Department shall transfer funds from the Commercial Fund that would have been paid from the Commercial Fund pursuant to subsection (b) or (b2) of G.S. 143-215.94B if the owner or operator had proceeded with the cleanup, but which were paid from the Noncommercial Fund, into the Noncommercial Fund.

(g) **(Effective January 1, 2009)** If the Department paid or reimbursed costs that are not authorized to be paid or reimbursed under G.S. 143-215.94B or G.S. 143-215.94D as a result of a misrepresentation by an agent who acted on behalf of an owner, operator, or landowner, the Department shall first seek reimbursement, pursuant to subdivision (1) of subsection (d) of this section, from the agent of monies paid to or retained by the agent.

(h) **(Effective January 1, 2009)** The Department shall take administrative action to recover costs or bring a civil action pursuant to subdivision (1) of subsection (d) of this section to seek reimbursement of costs in accordance with the time limits set out in this subsection.

(1) The Department shall take administrative action to recover costs or bring a civil action to seek reimbursement of costs that are not

authorized to be paid from the Commercial Fund under subdivision (1), (2), or (3) of G.S. 143-215.94B(d) or from the Noncommercial Fund under subdivision (1), (2), or (3) of G.S. 143-215.94D(d) within five years after payment.

(2) The Department shall take administrative action to recover costs or bring a civil action to seek reimbursement of costs other than those described in subdivision (1) of this subsection within three years after payment.

(3) Notwithstanding the time limits set out in subdivisions (1) and (2) of this subsection, the Department may take administrative action to recover costs or bring a civil action to seek reimbursement of costs paid as a result of fraud or misrepresentation at any time.

(i) **(Effective January 1, 2009)** An administrative action or civil action that is not commenced within the time allowed by subsection (h) of this section is barred.

(j) **(Effective January 1, 2009)** Except with the consent of the claimant, the Department may not withhold payment or reimbursement of costs that are authorized to be paid from the Commercial Fund or the Noncommercial Fund in order to recover any other costs that are in dispute unless the Department is authorized to withhold payment by a final decision of the Commission pursuant to G.S. 150B-36 or an order or final decision of a court. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652. ss. 9, 16; 1991, c. 538, ss. 8, 23; 1993, c. 400, s. 15; c. 402, s. 4; 1995, c. 377, s. 9; 2001-442, s. 3; 2008-195, ss. 3, 11.)

Editor's Note. —
Session Laws 2001-442, s. 7, as amended by Session Laws 2003-340, s. 2, provides: "Beginning 1 September 2003, the Secretary of Environment and Natural Resources shall submit an annual report to the Environmental Review Commission on the implementation of Sections 1 through 6 of this act [Session Laws 2001-442, ss. 1-6] as a part of the report required by G.S. 143-215.94M." Session Laws 2001-442, s. 8, provided that Session Laws 2001-442, s. 7, would expire October 1, 2006. Session Laws 2008-195, s. 11, effective retroactively to October 1, 2006, amended Session Laws 2001-442, s. 8, by extending the expiration date to October 1, 2011.

Session Laws 2001-442, s. 8, provided that s. 3 of the act, which added subsection (a3) of this section, would expire October 1, 2006. Session Laws 2008-195, s. 11, effective retroactively to October 1, 2006, amended Session Laws 2001-442, s. 8, by extending the expiration date to October 1, 2011.

Effect of Amendments. — Session Laws 2008-195, s. 3, effective January 1, 2009, added subsections (g) through (j).

§ 143-215.94H. Financial responsibility.

(a) The Department shall require each owner and operator of a petroleum underground storage tank who is required to demonstrate financial responsibility under rules promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. § 6991b(d) to maintain evidence of financial responsibility that is the lesser of:

(1) The full amount of the financial responsibility that an owner or operator is required to demonstrate under rules promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. § 6991b(d).

(2) The the amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) per occurrence for costs described in G.S. 143-215.94B(b) and G.S. 143-215.94B(b1) if costs are eligible to be paid under those subsections.

(b) Financial responsibility may be established in accordance with rules adopted by the Commission which shall provide that financial responsibility may be established by either insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer, or any combination thereof. The compliance date schedule for demonstrating financial responsibility shall conform to the schedule adopted by the Environmental Protection Agency. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 10; 1993, c. 402, s. 5; 2008-195, s. 4.)

Editor's Note. — This section was amended by Session Laws 2008-195, s. 4, in the coded bill drafting format provided by G.S. 120-20.1. At the beginning of what is now subdivision (2), the word "the" that now appears following "The" was not struck through. Subdivision (2) has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-195, s. 4, effective August 8, 2008, divided the former first sentence of the section into the present introductory language of subsection (a) and subdivision (a)(2); in subsection (a), substituted "that is the lesser of" for "of not less than" in the introductory language, added subdivision (a)(1), and in subdivision (a)(2), inserted "The" at the beginning and substituted "G.S. 143-215.94B(b1) if costs are eligible to be paid under those subsections" for "G.S. 143-215.94D(b1)"; and designated the former last two sentences of the section as subsection (b).

§ 143-215.94I. Insurance pools authorized; requirements.

(a) As used in this section, "Commissioner" means the Commissioner of Insurance of the State of North Carolina.

(b) Owners and operators of underground storage tanks may demonstrate financial responsibility by establishing insurance pools which provide insurance coverage to pool members in at least the minimum amounts specified in G.S. 143-215.94H. Each such pool shall be operated by a board of trustees consisting of at least five persons who are elected or appointed officials of pool members. The board of trustees of each pool shall:

(1) Establish terms and conditions of coverage within the pool, including underwriting criteria, applicable deductible levels, the maximum level of claims that the pool will self-insure, and exclusions of coverage;

(2) Ensure that all valid claims are paid promptly;

(3) Take all necessary precautions to safeguard the assets of the pool;

(4) Maintain minutes of its meetings and make those minutes available to the Commissioner;

(5) Designate an administrator to carry out the policies established by the board of trustees and to provide continual management of the pool, and delineate in written minutes of its meetings the areas of authority it delegates to the pool's administrator;

(6) Establish the amount of insurance to be purchased by the pool to provide coverage over and above the claims that are not to be satisfied directly from the pool's resources;

(7) Establish the amount, if any, of aggregate excess insurance coverage to be purchased and maintained in the event that the pool's resources are exhausted in a given fiscal period; and

(8) Establish guidelines for membership in the pool, including the amount of money to be collected from each pool member to form and fund the pool.

(c) The board of trustees may not:

(1) Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the Commissioner; or

(2) Borrow any monies from the pool or in the name of the pool, except in the ordinary course of business, without first advising the Commissioner of the nature and purpose of the loan and obtaining prior approval from the Commissioner.

(d) A contract or agreement made pursuant to this section must contain provisions:

(1) For a system or program of loss control;

(2) For termination of membership including both:

  - a. Cancellation of individual membership in the pool by the pool; and
  - b. Election by an individual member of the pool to terminate its participation;
- (3) That a pool or a terminating member must provide at least 90 days' written notice of cancellation or termination;
- (4) Requiring the pool to pay all claims for which each member incurs liability during each member's period of membership, except:
  - a. Where a member has individually retained the risk;
  - b. Where the risk is not covered; or
  - c. For amounts of claims above the coverage provided by the pool;
- (5) For the maintenance of claim reserves equal to known incurred losses and loss adjustment expenses and to an estimate of incurred but not reported losses;
- (6) For compliance with any applicable federal requirements regarding financial responsibility for underground storage tanks;
- (7) For a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled, or paid;
- (8) That the pool may establish offices where necessary in this State and employ necessary staff to carry out the purposes of the pool;
- (9) That the pool may retain legal counsel, actuaries, claims adjusters, auditors, engineers, private consultants, and advisors, and other persons as the board of trustees or the administrator deems to be necessary;
- (10) That the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers;
- (11) That the pool may purchase, lease, or rent real and personal property it deems to be necessary; and
- (12) That the pool may enter into financial services agreements with financial institutions and that it may issue checks in its own name.

(e) In the event that either the pool or an individual pool member gives notice of an intent to cancel or terminate participation in the pool as provided by subdivision (4) of subsection (d) of this section, the pool shall so notify both the Commissioner and the Secretary within five business days of the issuance or receipt of such notice by the pool. In addition, the pool shall notify both the Commissioner and the Secretary within five business days of the date such cancellation or termination becomes effective, unless notice of cancellation or termination is rescinded.

(f) The formation and operation of an insurance pool under this section shall be subject to approval by the Commissioner who shall, after notice and hearing, establish reasonable requirements and rules for the approval and monitoring of such pools, including prior approval of pool administrators and provisions for periodic examinations of financial condition. The Commissioner may disapprove an application for the formation of an insurance pool, and may suspend or withdraw such approval whenever he finds that such applicant or pool:

- (1) Has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the Commissioner or his representative;
- (2) Has refused, or its officers, agents, or administrators have refused, to furnish satisfactory evidence of its financial and business standing or solvency;
- (3) Is insolvent, or is in such condition that its further transaction of business in this State is hazardous to its members and creditors in this State and to the public;
- (4) Has refused or neglected to pay a valid final judgment against it within 60 days after its rendition;

(5) Has violated any law of this State or has violated or exceeded the powers granted by its members;

(6) Has failed to pay any taxes, fees, or charges imposed in this State within 60 days after they are due and payable, or within 60 days after final disposition or any legal contest with respect to liability therefor; or

(7) Has been found insolvent by a court of any other state, by the insurance regulator or other proper officer or agency of any other state, and has been prohibited from doing business in such state.

(g) Each pool shall be audited annually at the expense of the pool by a certified public accounting firm, with a copy of the report available to the governing body or chief executive officer of each member of the pool and to the Commissioner. The board of trustees of the pool shall obtain an appropriate actuarial evaluation of the loss and loss adjustment expense reserves of the pool, including an estimate of losses and loss adjustment expenses incurred but not reported. The provisions of G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, and 58-6-5 apply to each pool and to persons that administer the pools. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year. All financial statements required by this section shall be prepared in accordance with generally accepted statutory accounting principles.

(h) If, as a result of the annual audit or an examination by the Commissioner, it appears that the assets of a pool are insufficient to enable the pool to discharge its legal liabilities and other obligations, the Commissioner shall notify the administrator and the board of trustees of the pool of the deficiency and his list of recommendations to abate the deficiency, including a recommendation not to add any new members until the deficiency is abated. If the pool fails to comply with the recommendations within 30 days after the date of the notice, the Commissioner may apply to the Superior Court of Wake County for an order requiring the pool to abate the deficiency and authorizing the Commissioner to appoint one or more special deputy commissioners, counsel, clerks, or assistants to oversee the implementation of the Court's order. The Commissioner has all of the powers granted to him under Article 17A of General Statute Chapter 58 relating to rehabilitation and liquidation of insurers; and the provisions of that Article apply to this section to the extent they are not in conflict with this section. The compensation and expenses of such persons shall be fixed by the Commissioner, subject to the approval of the Court, and shall be paid out of the funds or assets of the pool.

(i) Each pool contract shall provide that the members of the pool shall be assessed on a pro rata basis as calculated by the amount of each member's average annual contribution in order to satisfy the amount of any deficiency where a pool is determined to be insolvent, financially impaired, or is otherwise found to be unable to discharge its legal liabilities and other obligations.

(j) In the event that the Commissioner finds that a pool is insolvent, financially impaired, or otherwise, unable to discharge its legal liabilities or obligations, or if the Commissioner at any time has reason to believe that any owner or operator is unable to demonstrate financial responsibility as required by G.S. 143-215.94H and rules adopted by the Commission as a result of the financial condition of the pool or for any other reason, the Commissioner shall so notify the Secretary.

(k) The provisions of Article 48 of Chapter 58 do not apply to any risks retained by any pool.

(*l*) The Department of Insurance, in consultation with the Petroleum Underground Storage Tank Funds Council and the Department of Environment and Natural Resources, shall provide guidance and technical assistance for the formation of an insurance pool pursuant to G.S. 143-215.94I to any responsible entity that requests assistance. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 11; 1995, c. 193, s. 66; 1999-132, s. 11.11; 2008-195, s. 10.)

Editor's Note. —
Session Laws 2008-195, s. 10, effective August 8, 2008, was codified as subsection (*l*) of this section at the direction of the Revisor of Statutes.

§ 143-215.94L. Definitions.

(a) The Commission may adopt rules necessary to implement the provisions of this Part. Except as may be otherwise specifically provided, the provisions of Chapter 150B of the General Statutes apply to this Part.

(b) This Part shall be administered by the Department consistent with the provisions of Title VI, § 601 of the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 42 U.S.C. § 6991 et seq., as amended. The provisions of 40 Code of Federal Regulations Part 280, Subpart I — Lender Liability (1 July 1997 Edition) apply to this Part and Part 2B of this Article.

(c) The provisions of this Part and of Part 2 of this Article are intended to be complementary. This Part shall not be construed to limit the liability under G.S. 143-215.84(a) of any person or to limit the authority of the Department to take any action pursuant to G.S. 143-215.84(b).

(d) This Part shall be known and may be cited as the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988.

(e) The Department of Environment and Natural Resources shall establish a process to provide informal notice of any proposed policy change or rule interpretation that is not a rule, as defined in G.S. 150B-2, to interested parties. Except in a situation that requires immediate action, the Department shall receive and consider oral and written comment from interested parties before the Department implements the proposed policy change or rule interpretation. Except in a situation that requires immediate action, the Department shall provide written notice of a policy change or rule interpretation to interested parties at least 30 days prior to its implementation. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1991, c. 538, ss. 10, 16; 1993, c. 400, s. 15; 1998-161, s. 9; 2008-195, s. 9.)

Editor's Note. — Session Laws 2008-195, s. 9, effective August 8, 2008, was codified as subsection (e) of this section at the direction of the Revisor of Statutes.

Session Laws 2008-195, s. 7, effective August 8, 2008, and expiring September 1, 2014, established a pilot program to evaluate the use of site-specific standards for cleanup of discharges or releases of petroleum from underground storage tanks. See note at G.S. 143-215.94A, 143-215.94T and 143-215.94V.

§ 143-215.94M. Reports.

Editor's Note. — Session Laws 2008-195, ss. 7 and 8, effective August 8, 2008, and expiring September 1, 2014, established a pilot program to evaluate the use of site-specific cleanup standards, provided for the reclassification of a site as low risk, and required annual reports to the Environmental Review Commission. See notes at G.S. 143-215.94A, 143-215.94T and 143-215.94V.

Session Laws 2001-442, s. 7, as amended by Session Laws 2003-340, s. 2, provides: "Beginning 1 September 2003, the Secretary of Environment and Natural Resources shall submit an annual report to the Environmental Review Commission on the implementation of Sections 1 through 6 of this act [Session Laws 2001-442, ss. 1-6] as a part of the report required by G.S. 143-215.94M." Session Laws 2001-442, s. 8, provided that Session Laws 2001-442, s. 7, would expire October 1, 2006. Session Laws 2008-195, s. 11, effective retroactively to October 1, 2006, amended Session Laws 2001-442, s. 8, by extending the expiration date to October 1, 2011.

Part 2B. Underground Storage Tank Regulation.

§ 143-215.94T. Adoption and implementation of regulatory program.

(a) The Commission shall adopt, and the Department shall implement and enforce, rules relating to underground storage tanks as provided by G.S. 143-215.3(a)(15) and G.S. 143B-282(a)(2)h. These rules shall include standards and requirements applicable to both existing and new underground storage tanks and tank systems, may include different standards and requirements based on tank capacity, tank location, tank age, and other relevant factors, and shall include, at a minimum, standards and requirements for:

(1) Design, construction, and installation, including monitoring systems.
(2) Notification to the Department, inspection, and registration.
(3) Recordation of tank location.
(4) Modification, retrofitting, and upgrading.
(5) General operating requirements.
(6) Release detection.
(7) Release reporting, investigation, and confirmation.
(8) Corrective action.
(9) Repair.
(10) Closure.
(11) Financial responsibility.
(12) Tank tightness testing procedures and certification of persons who conduct tank tightness tests.
(13) Secondary containment for all components of petroleum underground storage tank systems.

(b) Rules adopted pursuant to subsection (a) of this section that apply only to commercial underground storage tanks shall not apply to any:

(1) Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.
(2) Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored.
(3) Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households.

(c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all components of underground storage tank systems, including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall tanks, piping, and fittings and [for] sump containment for pump heads and dispensers. The rules shall provide for monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any component of an underground storage tank system on or after that date. (1989, c. 652, s. 14; 1998-161, s. 10; 1999-328, s. 4.12; 2003-352, s. 8; 2008-195, s. 5.)

Pilot Program to Evaluate the Use of Site-specific Cleanup Standards. — Session Laws 2008-195, s. 7, effective August 8, 2008, and expiring September 1, 2014, provides: "(a) The definitions set out in G.S. 143-215.94A apply to this section. As used in this section, 'Department' means the Department of Environment and Natural Resources and, with respect to any power or duty assigned to the Environmental Management Commission under Article 21A of Chapter 143 of the General Statutes, includes the Environmental Management Commission. As used in this section, 'site-specific cleanup standards' means standards developed using the methodology described in the Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites adopted by the American Society for

Testing and Materials (ASTM) as E1739-95(2002).

"(b) The Department shall establish a pilot program to evaluate the use of site-specific cleanup standards for the cleanup of discharges or releases of petroleum from underground storage tanks as an alternative to the use of the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0400. The purpose of the pilot program is to determine the extent to which the use of site-specific standards would provide effective protection of public health, safety, and the environment in a cost-effective manner and at a lower overall cost as compared with the use of the risk-based standards set out in 15A NCAC 2L.0400. The pilot program shall apply only to discharges or releases that are classified as intermediate risk under 15A NCAC 2L.0400(d). The pilot program shall evaluate the use of site-specific standards in the cleanup of contamination that results from a discharge or release of petroleum from: (i) an underground storage tank; and (ii) an underground storage tank that is commingled with petroleum contamination from a source of contamination other than an underground storage tank, as provided in G.S. 143-215.94V(h).

"(c) Participation in the pilot program shall be at the election of the owner, operator, or landowner. To participate in the pilot program, an owner, operator, or landowner shall perform a site-specific risk assessment and submit the assessment to the Department. If the Department determines that the use of site-specific cleanup standards will provide effective protection of public health, safety, and the environment, the Department shall set site-specific soil and groundwater cleanup standards for the discharge or release. These site-specific standards shall apply in lieu of the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0400.

"(d) If soil and groundwater contamination from a discharge or release is no greater than the site-specific soil and groundwater cleanup standards set by the Department, the Department shall notify an owner, operator, or landowner that no cleanup, further cleanup, or further action will be required. If soil and groundwater contamination from a discharge or release is greater than the site-specific soil and groundwater cleanup standards set by the Department, the owner, operator, or landowner shall submit a corrective action plan to achieve the standards. The Department may require the owner, operator, or landowner to evaluate the impact of the site-specific cleanup standards on public health, safety, and the environment through use of an appropriate model. The Department shall not set site-specific soil and groundwater cleanup standards for the discharge or release that allow for contamination in excess of unrestricted use standards, as defined in G.S. 143B-279.9, on any real property that is not subject to land-use restrictions under G.S. 143B-279.9 and recordation under G.S. 143B-279.11.

"(e) Except as provided in this section, the provisions of Part 2A and Part 2B of Article 21A of Chapter 143 of the General Statutes apply to this section.

"(f) The Department shall annually report to the Environmental Review Commission on the number of site-specific risk assessments submitted to the Department under the pilot program, the disposition of those submissions, and, for any submissions for which site-specific soil and groundwater cleanup standards are not set, the basis for the decision not to set site-specific cleanup standards. The report shall include a comparison of assessment and corrective action of discharges or releases under the pilot program to assessment and corrective action of intermediate risk discharges or releases pursuant to the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0400. The comparison shall include all of the following:

"(1) The costs associated with investigation, assessment, initial response, abatement, analysis of risk, and development and implementation of a corrective action plan.

"(2) The immediate and long-term impacts on public health, safety, and the environment.

"(3) The need for and use of land-use restrictions as part of the corrective action plan.

"(4) The extent to which corrective action addresses vapor intrusion.

"(g) The Department shall submit the first report required by subsection (f) of this section on or before 1 September 2009. The Department shall include in the report due on or before 1 September 2013 any recommendations, including legislative proposals, based on the findings of the pilot program."

Reclassification of Site to Lower Risk Classification. — Session Laws 2008-195, s. 8, effective August 8, 2008, and expiring September 1, 2014, provides: "(a) The definitions set out in subsection (a) of Section 7 of this act apply to this section. It is the policy of the State that a discharge or release be reclassified as low risk if, based on site-specific cleanup standards, investigation, assessment, initial response, abatement, risk-based corrective action, or other corrective action, the Department determines that the discharge or release poses no significant risk to human health or the environment. An owner, operator, or landowner may request that a discharge or release be reclassified to a lower risk classification. If the Department denies a request to reclassify a discharge or release to a lower risk classification, the owner, operator, or landowner may file a petition for a contested case hearing as provided in Article 3 of Chapter 150B of the General Statutes.

"(b) The Department shall report on or before 1 September of each year to the Environmental Review Commission on the number of sites for which reclassification was requested based on site-specific information and the disposition of each request. The Department shall submit the first report required by this section on or before 1 September 2009."

Editor's Note. — Session Laws 2008-195, s. 5, amended this section in the coded bill drafting format provided by G.S. 120-20.1. Subsection (c) is set out in the form above at the direction of the Revisor of Statutes. The bracketed word "[for]" was added by Session Laws 2008-195, but was not underlined per code drafting guidelines.

Effect of Amendments. — Session Laws 2008-195, s. 5, effective August 8, 2008, substituted "G.S. 143B-282(a)(2)h" for "G.S. 143B-282(2)h" in the introductory language of subsection (a); substituted "all" for "nontank" in subdivision (a)(13); and in subsection (c), deleted "nontank" preceding "components" in the first sentence, and "component" in the last sentence, substituted "including, but not limited to, tanks, piping" for "including all piping and," inserted "tanks" following "standards for double wall," and deleted "monthly" preceding "monitoring of double wall."

§ 143-215.94U. Registration of petroleum commercial underground storage tanks; operation of petroleum underground storage tanks; operating permit required.

(a) **(Effective until January 1, 2009)** The owner or operator of each petroleum commercial underground storage tank shall annually obtain an operating permit from the Department for the facility at which the tank is located. The Department shall issue an operating permit only if the owner or operator:

(1) Has notified the Department of the existence of all tanks as required by 40 Code of Federal Regulations § 280.22 (1 July 1994 Edition) or 42 U.S.C. § 6991a, if applicable, at the facility;

(2) Has paid all fees required under G.S. 143-215.94C for all commercial petroleum underground storage tanks located at the facility;

(3) Complies with applicable release detection, spill and overfill protection, and corrosion protection requirements set out in rules adopted pursuant to this Chapter, notifies the Department of the method or combination of methods of leak detection, spill and overfill protection, and corrosion protection in use, and certifies to the Department that all applicable release detection, spill and overfill protection, and corrosion protection requirements are being met for all petroleum underground storage tanks located at the facility;

(4) If applicable, complies with the Stage I vapor control requirements set out in 15A North Carolina Administrative Code 2D.0928, effective 1 March 1991, notifies the Department of the method or combination of methods of vapor control in use, and certifies to the Department that all Stage I vapor control requirements are being met for all petroleum underground storage tanks located at the facility; and

(5) Has substantially complied with the air quality, groundwater quality, and underground storage tank standards applicable to any activity in which the applicant has previously engaged and has been in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. In determining substantial compliance, the compliance history of the owner or operator and any parent, subsidiary, or other affiliate of the owner, operator, or parent may be considered.

(a) **(Effective January 1, 2009)** The owner or operator of each petroleum commercial underground storage tank shall annually obtain an operating permit from the Department for the facility at which the tank is located. The

G.S. 143-215.94U(a) and (e) are set out twice. See note.

Department shall issue an operating permit only if the owner or operator has done all of the following:

(1) Notified the Department of the existence of all tanks as required by 40 Code of Federal Regulations § 280.22 (1 July 1994 Edition) or 42 U.S.C. § 6991a, if applicable, at the facility.

(2) Paid all fees required under G.S. 143-215.94C for all commercial petroleum underground storage tanks located at the facility.

(3) Complies with applicable release detection, spill and overfill protection, and corrosion protection requirements set out in rules adopted pursuant to this Chapter, notifies the Department of the method or combination of methods of leak detection, spill and overfill protection, and corrosion protection in use, and certifies to the Department that all applicable release detection, spill and overfill protection, and corrosion protection requirements are being met for all petroleum underground storage tanks located at the facility.

(4) If applicable, complies with the Stage I vapor control requirements set out in 15A North Carolina Administrative Code 2D.0928, effective 1 March 1991, notifies the Department of the method or combination of methods of vapor control in use, and certifies to the Department that all Stage I vapor control requirements are being met for all petroleum underground storage tanks located at the facility.

(5) Substantially complied with the air quality, groundwater quality, and underground storage tank standards applicable to any activity in which the applicant has previously engaged and has been in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. In determining substantial compliance, the compliance history of the owner or operator and any parent, subsidiary, or other affiliate of the owner, operator, or parent may be considered.

(6) Demonstrated financial responsibility as required by G.S. 143-215.94H.

(b) The operating permit shall be issued at the time the commercial underground storage annual tank operating fee required under G.S. 143-215.94C(a) is paid and shall be valid from the first day of the month in which the fee is due through the last day of the last month for which the fee is paid in accordance with the schedule established by the Department under G.S. 143-215.94C(b).

(c) No person shall place a petroleum product, and no owner or operator shall cause a petroleum product to be placed, into an underground storage tank at a facility for which the owner or operator does not hold a currently valid operating permit.

(d) The Department shall issue an operating permit certificate for each facility that meets the requirements of subsection (a) of this section. The operating permit certificate shall identify the number of tanks at the facility and shall conspicuously display the date on which the permit expires. Except for the owner or operator, no person shall be liable under subsection (c) of this section if an unexpired operating permit certificate is displayed at the facility, unless the person knows or has reason to know that the owner or operator does not hold a currently valid operating permit for the facility.

(e) **(Effective until January 1, 2009)** The Department may revoke an operating permit only if the owner or operator fails to continuously meet the requirements set out in subdivisions (1) through (4) of subsection (a) of this section. If the Department revokes an operating permit, the owner or operator of the facility for which the operating permit was issued shall immediately

G.S. 143-215.94U(a) and (e) are set out twice. See note.

surrender the operating permit certificate to the Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a decision by the Department to deny or revoke an operating permit by filing a contested case under Article 3 of Chapter 150B of the General Statutes. The Secretary shall make the final agency decision regarding the revocation of a permit under this section.

(e) **(Effective January 1, 2009)** The Department may revoke an operating permit only if the owner or operator fails to continuously meet the requirements set out in subsection (a) of this section. If the Department revokes an operating permit, the owner or operator of the facility for which the operating permit was issued shall immediately surrender the operating permit certificate to the Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a decision by the Department to deny or revoke an operating permit by filing a contested case under Article 3 of Chapter 150B of the General Statutes. The Secretary shall make the final agency decision regarding the revocation of a permit under this section. (1995, c. 377, s. 2; 1998-161, s. 6; 2008-195, s. 6.)

Subsections (a) and (e) Set Out Twice. — The first versions of subsections (a) and (e) set out above are effective until January 1, 2009. The second versions of subsections (a) and (e) set out above are effective January 1, 2009.

Effect of Amendments. — Session Laws 2008-195, s. 6, effective January 1, 2009, inserted "has done all of the following" in the introductory language of subsection (a); made grammatical and stylistic changes in subdivisions (a)(1) through (a)(5); added subdivision (a)(6); and deleted "subdivisions (1) through (4) of" preceding "subsection (a)" in the first sentence of subsection (e).

§ 143-215.94V. Standards for petroleum underground storage tank cleanup.

Pilot Program to Evaluate the Use of Site-specific Cleanup Standards. — Session Laws 2008-195, s. 7, effective August 8, 2008, and expiring September 1, 2014, provides: "(a) The definitions set out in G.S. 143-215.94A apply to this section. As used in this section, 'Department' means the Department of Environment and Natural Resources and, with respect to any power or duty assigned to the Environmental Management Commission under Article 21A of Chapter 143 of the General Statutes, includes the Environmental Management Commission. As used in this section, 'site-specific cleanup standards' means standards developed using the methodology described in the Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites adopted by the American Society for Testing and Materials (ASTM) as E1739-95(2002).

"(b) The Department shall establish a pilot program to evaluate the use of site-specific cleanup standards for the cleanup of discharges or releases of petroleum from underground storage tanks as an alternative to the use of the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0400. The purpose of the pilot program is to determine the extent to which the use of site-specific standards would provide effective protection of public health, safety, and the environment in a cost-effective manner and at a lower overall cost as compared with the use of the risk-based standards set out in 15A NCAC 2L.0400. The pilot program shall apply only to discharges or releases that are classified as intermediate risk under 15A NCAC 2L.0400(d). The pilot program shall evaluate the use of site-specific standards in the cleanup of contamination that results from a discharge or release of petroleum from: (i) an underground storage tank; and (ii) an underground storage tank that is commingled with petroleum contamination from a source of contamination other than an underground storage tank, as provided in G.S. 143-215.94V(h).

"(c) Participation in the pilot program shall be at the election of the owner, operator, or landowner. To participate in the pilot program, an owner, operator, or landowner shall perform a site-specific risk assessment and submit the assessment to the Department. If the Department determines that the use of site-specific cleanup standards will provide effective protection of public health, safety, and the environment, the Department shall set site-specific soil and groundwater cleanup standards for the discharge or release. These site-specific standards shall apply in lieu of the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0400.

"(d) If soil and groundwater contamination from a discharge or release is no greater than the site-specific soil and groundwater cleanup standards set by the Department, the Department shall notify an owner, operator, or landowner that no cleanup, further cleanup, or further action will be required. If soil and groundwater contamination from a discharge or release is greater than the site-specific soil and groundwater cleanup standards set by the Department, the owner, operator, or landowner shall submit a corrective action plan to achieve the standards. The Department may require the owner, operator, or landowner to evaluate the impact of the site-specific cleanup standards on public health, safety, and the environment through use of an appropriate model. The Department shall not set site-specific soil and groundwater cleanup standards for the discharge or release that allow for contamination in excess of unrestricted use standards, as defined in G.S. 143B-279.9, on any real property that is not subject to land-use restrictions under G.S. 143B-279.9 and recordation under G.S. 143B-279.11.

"(e) Except as provided in this section, the provisions of Part 2A and Part 2B of Article 21A of Chapter 143 of the General Statutes apply to this section.

"(f) The Department shall annually report to the Environmental Review Commission on the number of site-specific risk assessments submitted to the Department under the pilot program, the disposition of those submissions, and, for any submissions for which site-specific soil and groundwater cleanup standards are not set, the basis for the decision not to set site-specific cleanup standards. The report shall include a comparison of assessment and corrective action of discharges or releases under the pilot program to assessment and corrective action of intermediate risk discharges or releases pursuant to the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0400. The comparison shall include all of the following:

"(1) The costs associated with investigation, assessment, initial response, abatement, analysis of risk, and development and implementation of a corrective action plan.

"(2) The immediate and long-term impacts on public health, safety, and the environment.

"(3) The need for and use of land-use restrictions as part of the corrective action plan.

"(4) The extent to which corrective action addresses vapor intrusion.

"(g) The Department shall submit the first report required by subsection (f) of this section on or before 1 September 2009. The Department shall include in the report due on or before 1 September 2013 any recommendations, including legislative proposals, based on the findings of the pilot program."

Reclassification of Site to Lower Risk Classification. — Session Laws 2008-195, s. 8, effective August 8, 2008, and expiring September 1, 2014, provides: "(a) The definitions set out in subsection (a) of Section 7 of this act apply to this section. It is the policy of the State that a discharge or release be reclassified as low risk if, based on site-specific cleanup standards, investigation, assessment, initial response, abatement, risk-based corrective action, or other corrective action, the Department determines that the discharge or release poses no significant risk to human health or the environment. An owner, operator, or landowner may request that a discharge or release be reclassified to a lower risk classification. If the Department denies a request to reclassify a discharge or release to a lower risk classification, the owner, operator, or landowner may file a petition for a contested case hearing as provided in Article 3 of Chapter 150B of the General Statutes.

"(b) The Department shall report on or before 1 September of each year to the Environmental Review Commission on the number of sites for which reclassification was requested based on site-specific information and the disposition of each request. The Department shall submit the first report required by this section on or before 1 September 2009."

Part 6. Dry-Cleaning Solvent Cleanup.

§ 143-215.104C. (Repealed effective January 1, 2012 — See notes) Dry-Cleaning Solvent Cleanup Fund.

Editor's Note. —

Session Laws 2008-107, s. 12.5, provides: "There is appropriated from the interest earned on the Dry Cleaning Solvent Cleanup Fund during the 2007-2008 fiscal year to the Department of Environment and Natural Resources the sum of four hundred thousand dollars ($400,000) for the 2008-2009 fiscal year to be used, notwithstanding G.S. 143-215.104C, to assess and remove contamination from inactive hazardous waste sites throughout the State and to provide an alternative drinking water supply to any person whose water supply was contaminated by an inactive hazardous waste site."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 21B.

Air Pollution Control.

§ 143-215.107D. Emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) from certain coal-fired generating units.

Report. — Session Laws 2005-442, s. 11, as amended by Session Laws 2006-73, s. 1, and as amended by Session Laws 2008-81, s.1, provides: "Reports. — The Commission may submit interim reports at its discretion. The Commission shall submit a final report, including any findings and recommendations, to the 2009 General Assembly and the Environmental Review Commission on or before 1 October 2009, at which time the Commission shall terminate."

ARTICLE 25B.

State Nature and Historic Preserve Dedication Act.

§ 143-260.10. Components of State Nature and Historic Preserve.

The following are components of the State Nature and Historic Preserve accepted by the North Carolina General Assembly pursuant to G.S. 143-260.8:

(1) All lands and waters within the boundaries of the following units of the State Parks System as of 1 May 2007: Baldhead Island State Natural Area, Bay Tree Lake State Park, Beech Creek Bog State Natural Area, Bullhead Mountain State Natural Area, Bushy Lake State Natural Area, Carolina Beach State Park, Carvers Creek State Park, Chimney Rock State Park, Cliffs of the Neuse State Park, Chowan Swamp State Natural Area, Dismal Swamp State Park, Elk Knob State Park, Fort Fisher State Recreation Area, Fort Macon State Park, Goose Creek State Park, Gorges State Park, Haw River State Park, Hammocks Beach State Park, Jones Lake State Park, Lake Norman State Park, Lea Island State Natural Area, Lower Haw River State Natural Area, Lumber River State Park, Mayo River State Park, Medoc Mountain State Park, Merchants Millpond State Park, Mitchells Millpond State Natural Area, Mount Mitchell State Park, Mountain Bog State Natural Area, Occoneechee Mountain State Natural Area, Pettigrew State Park, Pilot Mountain State Park, Raven Rock State Park, Run Hill State Natural Area, Sandy Run Savannas State Natural Area, Singletary Lake State Park, Theodore Roosevelt State Natural Area, and Weymouth Woods-Sandhills Nature Preserve.

(2) All lands and waters within the boundaries of William B. Umstead State Park as of 1 May 2007 with the exception of Tract Number 65,

containing 22.93140 acres as shown on a survey prepared by John S. Lawrence (RLS) and Bennie R. Smith (RLS), entitled "Property of The State of North Carolina William B. Umstead State Park", dated January 14, 1977 and filed in the State Property Office, which was removed from the State Nature and Historic Preserve by Chapter 450, Section 1 of the 1985 Session Laws. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of William B. Umstead State Park or sell and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land.

(3) Repealed by Session Laws 1999-268, s. 2.

(4) All lands within the boundaries of Morrow Mountain State Park as of 1 May 2007 with the exception of the following tract: That certain tract or parcel of land at Morrow Mountain State Park in Stanly County, North Albemarle Township, containing 0.303 acres, more or less, as surveyed and platted by Thomas W. Harris R.L.S., on a map dated August 27, 1988, and filed in the State Property Office, reference to which is hereby made for a more complete description.

(5) Repealed by Session Laws 1999-268, s. 2.

(6) All land within the boundaries of Crowders Mountain State Park as of 1 May 2007 with the exception of the following tracts. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Crowders Mountain State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

a. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, Crowders Mountain Township, described in Deed Book 1939, page 800, and containing 757.28 square feet and as shown in a survey by Tanner and McConnaughey, P.A. dated July 22, 1988 and filed in the State Property Office.

b. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, east of and including the right-of-way along and across Old Peach Orchard Road, as shown in a survey by the City of Gastonia, File No. 400-194, dated November 23, 1998, and filed in the State Property Office.

(7) All lands owned in fee simple by the State within the boundaries of New River State Park as of 1 May 2007.

(8) All lands and waters within the boundaries of Stone Mountain State Park as of 1 May 2007 with the exception of the following tracts: The portion of that certain tract or parcel of land at Stone Mountain State Park in Wilkes County, Traphill Township, described as parcel 33-02 in Deed Book 633-193, and more particularly described as all of the land in this parcel lying to the west of the eastern edge of the Air Bellows Road, as shown on the National Park Service Land Status Map 33 dated March 24, 1981 and filed in the State Property Office, containing approximately 72 acres. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14.

(9) All lands and waters located within the boundaries of the following State Historic Sites as of 1 May 2007: Alamance Battleground, Charles B. Aycock Birthplace, Historic Bath, Bennett Place,

Bentonville Battleground, Brunswick Town/Fort Anderson, C.S.S. Neuse and Governor Caswell Memorial, Charlotte Hawkins Brown Memorial, Duke Homestead, Historic Edenton, Fort Dobbs, Fort Fisher, Historic Halifax, Horne Creek Living Historical Farm, House in the Horseshoe, North Carolina Transportation Museum, James K. Polk Memorial, Reed Gold Mine, Somerset Place, Stagville, State Capitol, Town Creek Indian Mound, Tryon Palace Historic Sites & Gardens, Zebulon B. Vance Birthplace, and Thomas Wolfe Memorial.

(10), (11) Repealed by Session Laws 2001-217, s. 2, effective June 15, 2001.

(12) All lands and waters located within the boundaries of Hanging Rock State Park as of 1 May 2007 with the exception of the following tract: The portion of that tract or property at Hanging Rock State Park in Stokes County, Danbury Township, described in Deed Book 360, Page 160, for a 30-foot wide right-of-way beginning approximately 183 feet south of SR 1001 and extending in a southerly direction approximately 1,479 feet to the southwest corner of the Bobby Joe Lankford tract and more particularly shown on a survey entitled, "J. Spot Taylor Heirs Survey, Danbury Township, Stokes County, N.C.", by Grinski Surveying Company, dated June 1985, and filed in the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14.

(13) All lands and waters located within the boundaries of South Mountains State Park as of 1 May 2007 with the exception of the following tracts. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14.

a., b. Repealed by Session Laws 2007-307, s. 1, effective July 28, 2007.

c. The portions of land at South Mountains State Park that lie south of the centerline of the CCC road as shown on the drawing entitled "Land Trade between South Mountains State Park and Adjacent Game Lands along CCC Road" prepared by the Division of Parks and Recreation, dated March 15, 1999, and filed in the State Property Office and that lie within: (i) the tract or property in Burke County, Lower Fork Township, described in Deed Book 495, Page 501; (ii) the tract or property in Burke County, Lower Fork and Upper Fork Townships, described in Deed Book 715, Page 719; or, (iii) within the tracts or property in Burke County, Upper Fork Township, described in Deed Book 860, Page 341, and Deed Book 884, Page 1640. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

d. Repealed by Session Laws 2007-307, s. 1, effective July 28, 2007.

(14) Repealed by Session Laws 2003-234, s. 1, effective June 19, 2003.

(15) All lands and waters within the boundaries of Jockey's Ridge State Park as of 1 May 2007 with the exception of the following tracts: The portion of those certain tracts or parcels of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 227, Page 499, and Deed Book 227, Page 501, and containing 33,901 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 13 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property

Office; the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 222, Page 726, and containing 42,909 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 14 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; and the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 224, Page 790, and Deed Book 224, Page 794, and containing 34,471 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 15 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office.

(16) All lands and waters located within the boundaries of Mount Jefferson State Natural Area as of 1 May 2007. With respect to the communications tower site on the top of Mount Jefferson and located on that certain tract or parcel of land at Mount Jefferson State Natural Area in Ashe County, West Jefferson Township, described in Deed Book F-3, Page 94, the State may provide space at the communications tower site to State public safety and emergency management agencies for the placement of antennas, repeaters, and other communications devices for public communications purposes. Notwithstanding G.S. 146-29.2, the State may lease space at the communications tower site to local governments in Ashe County for the placement of antennas, repeaters, and other communications devices for public communications purposes. State agencies and local governments that are authorized to place communications devices at the communications tower site pursuant to this subdivision may also locate at or near the communications tower site communications equipment that is necessary for the proper operation of the communications devices. The use of the communications tower site pursuant to this subdivision is authorized by the General Assembly as a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes.

(17) All lands and waters within the Eno River State Park as of 1 May 2007 with the exception of the following tract: The portion of that certain tract or parcel of land at Eno River State Park in Durham County, Durham Outside Township, described in Deed Book 435, Page 673, and Plat Book 87, Page 66, containing 11,000 square feet and being the portion of Lot No. 2 shown as the existing scenic easement hereby removed on the drawing prepared by Sear-Brown entitled "Recombination Plat Eno Forest Subdivision" bearing the preparer's file name 00-208-07.dwg, and filed with State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Eno River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(18) All land and waters within the boundaries of Hemlock Bluffs State Natural Area as of 1 May 2007, with the exception of the following tracts: The portion of that certain tract or parcel of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461, Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the

drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 3 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Hemlock Bluffs State Natural Area or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(19) All lands and waters within the boundaries of Lake James State Park as of 1 May 2007, with the exception of the following tracts:

a. The portion of that certain tract or parcel of land at Lake James State Park containing 13.85 acres, and being 100 feet to the east and 150 feet to the west of a centerline shown on a survey by Witherspoon Surveying PLLC, dated February 9, 2007, and filed in the State Property Office. The State of North Carolina may grant a temporary easement to Duke Energy Corporation across this tract to facilitate the Catawba Dam Embankment Seismic Stability Improvements Project. The grant of the easement within Lake James State Park to Duke Energy Corporation under this sub-subdivision constitutes authorization by the General Assembly that the described tract of land may be used for a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes. The State of North Carolina may use the proceeds from the easement only for the expansion or improvement of Lake James State Park or another State park. The State may not otherwise sell or exchange this land.

b. The portion of that certain tract or parcel of land at Lake James State Park in McDowell County, Nebo Township, described in Deed Book 377, Page 423, and also shown as Tract B on the plat of survey prepared by Kenneth D. Suttles, RLS, dated December 4, 1987, entitled "Lake James State Park," Sheet 1 of 2, recorded in Plat Book 4, Page 275 of the McDowell County Registry, for a 40-foot right-of-way beginning at the southwest corner of Tract B and continuing along the southern boundary S 86 38′ 51″ E for 400 feet to the now or former John D. Walker property. The State of North Carolina may grant an easement across this tract to extinguish prescriptive easements on Tract B to improve management of the State park property. The State may not otherwise sell or exchange this land. The easement excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 113-44.14.

(20) All lands and waters within the boundaries of Lake Waccamaw State Park as of May 1, 2007, with the exception of the following tracts: The

portions of that certain tract or parcel of land at Lake Waccamaw State Park in Columbus County described in Deed Book 835, Page 590, containing 48,210 square feet and being the portion of this tract shown as new R/W and permanent utility easement on drawing prepared by State of North Carolina Department of Transportation entitled "Map of Proposed Right of Way Property of State of North Carolina (Parks and Recreation) Columbus County" for Tip B-3830 on SR 1947 (Bella Coola Road) done by John E. Kaukola, PLS No. 3999 and compiled 1-18-2008, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Lake Waccamaw State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land. (1979, c. 498; 1989, Joint Res. 23; c. 146, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 30; 1999-268, s. 2; 2001-217, s. 2; 2002-149, s. 1; 2003-234, s. 1; 2004-25, s. 2; 2007-307, s. 1; 2008-11, s. 1.)

Effect of Amendments. —
Session Laws 2008-11, s. 1, effective June 25, 2008, deleted "Lake Waccamaw State Park" preceding "Lea Island State Natural Area" in subdivision (1); and added subdivision (20).

ARTICLE 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages; liability insurance in lieu of obligation under Article.

CASE NOTES

II. Procedure.

II. PROCEDURE.

Failure to Meet Burden of Proof. — Parents of an injured child were not entitled to payment of damages for personal injuries to the child in an action against a county board of education because the parents failed to prove that board's employee, who was a school bus driver, was negligent and that the negligence of the employee caused the injury to the child in a school bus accident. Coulter v. Catawba County Bd. of Educ., — N.C. App. —, 657 S.E.2d 428, 2008 N.C. App. LEXIS 414 (2008).

§ 143-293. Appeals to Court of Appeals.

CASE NOTES

Preservation for Review. — Although the parents of an injured child assigned as error a deputy commissioner's alleged errors, they did not assign as error the North Carolina Industrial Commission's failure to address this alleged error; thus, the issue was not properly preserved for appellate review because appellate review was limited to the decision and order of the Commission pursuant to G.S. 143-293. Coulter v. Catawba County Bd. of Educ., — N.C. App. —, 657 S.E.2d 428, 2008 N.C. App. LEXIS 414 (2008).

Competent evidence supported factual findings, etc.

North Carolina Industrial Commission's decision in favor of a county board of education was affirmed because the Commission's findings of fact were supported by competent evidence, and the Commission did not err in concluding that the parents of an injured child failed to prove that the board's employee, who was a school bus driver, was negligent and that the negligence of the employee caused the injury to the child in a school bus accident. Coulter v. Catawba County Bd. of Educ., — N.C. App. —, 657 S.E.2d 428, 2008 N.C. App. LEXIS 414 (2008).

§ 143-299.1A. Limit use of public duty doctrine as an affirmative defense.

(a) Except as provided in subsection (b) of this section, the public duty doctrine is an affirmative defense on the part of the State department, institution, or agency against which a claim is asserted if and only if the injury of the claimant is the result of any of the following:

(1) The alleged negligent failure to protect the claimant from the action of others or from an act of God by a law enforcement officer as defined in subsection (d) of this section.

(2) The alleged negligent failure of an officer, employee, involuntary servant or agent of the State to perform a health or safety inspection required by statute.

(b) Notwithstanding subsection (a) of this section, the affirmative defense of the public duty doctrine may not be asserted in any of the following instances:

(1) Where there is a special relationship between the claimant and the officer, employee, involuntary servant or agent of the State.

(2) When the State, through its officers, employees, involuntary servants or agents, has created a special duty owed to the claimant and the claimant's reliance on that duty is causally related to the injury suffered by the claimant.

(3) Where the alleged failure to perform a health or safety inspection required by statute was the result of gross negligence.

(c) Nothing in this section shall limit the assertion of the public duty doctrine as a defense on the part of a unit of local government or its officers, employees, or agents. This section does not apply to a unit of local government or its officers, employees, or agents.

(d) For purposes of this section, "law enforcement officer" means a full-time or part-time employee or agent of a State department, institution, or agency or an agent of the State operating under an agreement with a State department, institution, or agency of the State who is any of the following:

(1) Actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes.

(2) Possesses the power of arrest by virtue of an oath administered under the authority of the State.

(3) Is a juvenile justice officer, chief court counselor, or juvenile court counselor.

(4) Is a correctional officer performing duties of custody, supervision, and treatment to control and rehabilitate criminal offenders.

(5) Is a firefighter as defined in G.S. 113-60.32(1).

(6) Is a probation officer appointed under Article 20 of Chapter 15 of the General Statutes. (2008-170, s. 1; 2008-187, s. 47.)

Editor's Note. — Session Laws 2008-170, s. 2, made this section effective October 1, 2008, and applicable to claims arising on or after that date.

This section was amended by Session Laws 2008-187, s. 47, in the coded bill drafting format provided by G.S. 120-20.1. The amendment by Session Laws 2008-187, s. 47, did not strike through the first sentence of subsection (c), as enacted by Session Laws 2008-170, s. 1. Subsection (c) has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2008-187, s. 47, was contingent on House Bill 1113 (Session Laws 2008-170) becoming law, which it did.

Effect of Amendments. — Session Laws 2008-187, s. 47, effective August 7, 2008, rewrote subsection (c).

Article 33C.

Meetings of Public Bodies.

§ 143-318.9. Public policy.

CASE NOTES

Affirmative defense of public official immunity did not apply to a claim for a violation of G.S. 143-318.9 (the open meetings law) because plaintiffs did not allege that a violation caused injury for which plaintiffs were entitled to compensation as persons distinct from the general public. Free Spirit Aviation, Inc. v. Rutherford Airport Auth., — N.C. App. —, 664 S.E.2d 8, 2008 N.C. App. LEXIS 1494 (Aug. 5, 2008).

§ 143-318.10. All official meetings of public bodies open to the public.

Local Modification. — Hyde: 2008-111, ss. 2 and 3.

CASE NOTES

County board of elections violated the North Carolina Open Meetings Law, G.S. 143-318.9 et seq., by going into closed session without a vote of the board or stating its purpose for such a session. The board's failure to consider a recusal motion in a public setting also violated the Open Meetings Law. Knight v. Higgs, — N.C. App. —, 659 S.E.2d 742, 2008 N.C. App. LEXIS 702 (2008).

§ 143-318.11. Closed sessions.

CASE NOTES

Propriety of Closed Session. — Pursuant to G.S. 143-318.11(c), county board of elections violated the North Carolina Open Meetings Law, G.S. 143-318.9 et seq., by going into closed session without a vote of the board or stating its purpose for such a session. The board's failure to consider a recusal motion in a public setting also violated the Open Meetings Law. Knight v. Higgs, — N.C. App. —, 659 S.E.2d 742, 2008 N.C. App. LEXIS 702 (2008).

§ 143-318.13. Electronic meetings; written ballots; acting by reference.

Local Modification. — Hyde: 2008-111, s. 1.

§ 143-318.16. Injunctive relief against violations of Article.

CASE NOTES

Cited in Free Spirit Aviation, Inc. v. Rutherford Airport Auth., — N.C. App. —, 664 S.E.2d 8, 2008 N.C. App. LEXIS 1494 (Aug. 5, 2008).

§ 143-318.16A. Additional remedies for violations of Article.

CASE NOTES

Trial court's failure to make conclusions of law that demonstrated consideration of the statutory factors for violations of the North Carolina Open Meetings Law, G.S. 143-318.9 et seq., was reversible error. Knight v. Higgs, — N.C. App. —, 659 S.E.2d 742, 2008 N.C. App. LEXIS 702 (2008).

Cited in Free Spirit Aviation, Inc. v. Rutherford Airport Auth., — N.C. App. —, 664 S.E.2d 8, 2008 N.C. App. LEXIS 1494 (Aug. 5, 2008).

§ 143-318.16B. Assessments and awards of attorneys' fees.

CASE NOTES

Merits Test for Award of Attorney's Fees to Prevailing Party. — Award of attorney's fees is discretionary under G.S. 143-318.16B, and the merits test has been adopted as the proper standard for awarding attorney's fees to prevailing parties pursuant to G.S. 143-318.16B. Knight v. Higgs, — N.C. App. —, 659 S.E.2d 742, 2008 N.C. App. LEXIS 702 (2008).

Prevailing Party. —

Registered voter who challenged the conduct of the county board of elections in finding that the voter was not a resident of the county in which the voter was registered was the prevailing party under G.S. 143-318.16B, and, upon remand, the trial court was to consider the taxing of attorney's fees. Knight v. Higgs, — N.C. App. —, 659 S.E.2d 742, 2008 N.C. App. LEXIS 702 (2008).

Cited in Free Spirit Aviation, Inc. v. Rutherford Airport Auth., — N.C. App. —, 664 S.E.2d 8, 2008 N.C. App. LEXIS 1494 (Aug. 5, 2008).

ARTICLE 36.

Department of Administration.

Part 1. General Provisions.

§ 143-336. (Effective until October 1, 2011) Definitions.

(a) As used in this Article:

(1) "Agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

(2) "Community college buildings" means all buildings, utilities, and other property developments located at a community college, which is defined in G.S. 115D-2(2).

(3) "Department" means the Department of Administration, unless the context otherwise requires.

(4) "Public buildings" means all buildings owned or maintained by the State in the City of Raleigh, but does not mean any building that a State agency other than the Department of Administration is required by law to care for and maintain.

(5) "Public buildings and grounds" means all buildings and grounds owned or maintained by the State in the City of Raleigh, but does not mean any building or grounds that a State agency other than the Department of Administration is required by law to care for and maintain.

G.S. 143-336 is set out twice. See notes.

(6) "Public grounds" means all grounds owned or maintained by the State in the City of Raleigh, but does not mean any grounds that a State agency other than the Department of Administration is required by law to care for and maintain.

(7) "Secretary" means the Secretary of Administration, unless the context otherwise requires.

(8) "State buildings" mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, bridge structures, any buildings, utilities, or property owned or leased by the North Carolina Global TransPark Authority, and performance-based cleanups of environmental damage resulting from the discharge or release of a petroleum product from an underground storage tank pursuant to G.S. 143-215.94B(f) and G.S. 143-215.94D(f).

(b) Under no circumstances shall this Article or any part thereof apply to the judicial or to the legislative branches of the State. (1957, c. 215, s. 2; c. 269, s. 1; 1963, c. 1, s. 6; 1971, c. 1097, s. 1; 1975, c. 879, s. 46; 1989, c. 58, s. 1; 1991, c. 749, s. 5; 1993 (Reg. Sess., 1994), c. 777, s. 4(h); 2001, c. 442, s. 5; 2008-195, s. 11.)

Section Set Out Twice. — The section above is effective until October 1, 2011. For the section as effective October 1, 2011, see the following section, also numbered G.S. 143-336.

Editor's Note. — Session Laws 2001-442, s. 7, as amended by Session Laws 2003-340, s. 2, provides: "Beginning 1 September 2003, the Secretary of Environment and Natural Resources shall submit an annual report to the Environmental Review Commission on the implementation of Sections 1 through 6 of this act [Session Laws 2001-442, ss. 1-6] as a part of the report required by G.S. 143-215.94M." Session Laws 2001-442, s. 8, provided that Session Laws 2001-442, s. 7, would expire October 1, 2006. Session Laws 2008-195, s. 11, effective retroactively to October 1, 2006, amended Session Laws 2001-442, s. 8, by extending the expiration date to October 1, 2011.

Session Laws 2001-442, s. 8, provided that s. 5 of the act, which amended this section, would expire October 1, 2006. Session Laws 2008-195, s. 11, effective retroactively to October 1, 2006, amended Session Laws 2001-442, s. 8, by extending the expiration date to October 1, 2011.

§ 143-336. (Effective October 1, 2011) Definitions.

As used in this Article:

"Agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

"Community college buildings" means all buildings, utilities, and other property developments located at a community college, which is defined in G.S. 115D-2(2).

"Department" means the Department of Administration, unless the context otherwise requires.

"Public buildings" means all buildings owned or maintained by the State in the City of Raleigh, but does not mean any building which a State agency other than the Department of Administration is required by law to care for and maintain.

"Public buildings and grounds" means all buildings and grounds owned or maintained by the State in the City of Raleigh, but does not mean any building or grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

"Public grounds" means all grounds owned or maintained by the State in the City of Raleigh, but does not mean any grounds which a State agency other

G.S. 143-336 is set out twice. See notes.

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than the Department of Administration is required by law to care for and maintain.

"Secretary" means the Secretary of Administration, unless the context otherwise requires.

"State buildings" mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, bridge structures, and any buildings, utilities, or property owned or leased by the North Carolina Global TransPark Authority.

But under no circumstances shall this Article or any part thereof apply to the judicial or to the legislative branches of the State. (1957, c. 215, s. 2; c. 269, s. 1; 1963, c. 1, s. 6; 1971, c. 1097, s. 1; 1975, c. 879, s. 46; 1989, c. 58, s. 1; 1991, c. 749, s. 5; 1993 (Reg. Sess., 1994), c. 777, s. 4(h); 2001, c. 442, ss. 5, 8.)

Section Set Out Twice. — The section above is effective October 1, 2011. For the section as in effect until October 1, 2011, see the preceding section, also numbered G.S. 143-336.

Editor's Note. — Session Laws 2001-442, s. 7, as amended by Session Laws 2003-340, s. 2, provides: "Beginning 1 September 2003, the Secretary of Environment and Natural Resources shall submit an annual report to the Environmental Review Commission on the implementation of Sections 1 through 6 of this act [ss. 1 to 6 of Session Laws 2001-442] as a part of the report required by G.S. 143-215.94M." Section 8 of Session Laws 2001-442, as amended by Session Laws 2008-195, s. 11, provides that s. 7 expires October 1, 2011.

§ 143-341. Powers and duties of Department.

Local Modification. — Burke: 2007-35, s. 1 (expires December 31, 2011); City of Laurinburg: 2008-72, s. 1 (expires December 31, 2011); Piedmont Community College: 2007-35, s. 1 (expires December 31, 2011); Richmond Community College: 2008-72, s. 1 (expires December 31, 2011).

ARTICLE 38.

Water Resources.

§ 143-350. Definitions.

As used in this Article:

(1) "Commission" means the Environmental Management Commission.

(2) "Department" means the Department of Environment and Natural Resources.

(3) "Essential water use" means the use of water necessary for firefighting, health, and safety; water needed to sustain human and animal life; and water necessary to satisfy federal, State, and local laws for the protection of public health, safety, welfare, the environment, and natural resources; and a minimum amount of water necessary to maintain the economy of the State, region, or area.

(4) "Large community water system" means a community water system, as defined in G.S. 130A-313(10), that regularly serves 1,000 or more service connections or 3,000 or more individuals.

(5) "Unit of local government" means a county, city, consolidated city-county, sanitary district, or other local political subdivision or authority or agency of local government.

(6) "U.S. Drought Monitor" means the national drought map that designates areas of drought using the following categories D0-Abnormally

Dry, D1-Moderate, D2-Severe, D3-Extreme, and D4-Exceptional. The U.S. Drought Monitor is developed and maintained by the Joint Agricultural Weather Facility, the Climate Prediction Center, the National Climatic Data Center, and the National Drought Mitigation Center with input from the United States Geological Survey, the National Water and Climate Center, the Climate Diagnostics Center, the National Weather Service, state climatologists, and state water resource agencies.

(7) "Water shortage emergency" means a water shortage resulting from prolonged drought, contamination of the water supply, damage to water infrastructure, or other unforeseen causes that presents an imminent threat to public health, safety, and welfare or to the environment. (1959, c. 779, s. 1; 1967, c. 892, s. 12; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(117); 1989 (Reg. Sess., 1990), c. 1004, s. 18; c. 1024, s. 34; 1991, c. 342, s. 15(a); 1997-443, s. 11A.119(a); 2008-143, s. 3.)

Editor's Note. —

Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

Effect of Amendments. — Session Laws 2008-143, s. 3, effective July 31, 2008, added subdivisions (3) through (7).

§ 143-354. Ordinary powers and duties of the Commission.

(a) Powers and Duties in General. — Except as otherwise specified in this Article, the powers and duties of the Commission shall be as follows:

(1) The Commission shall carry out a program of planning and education concerning the most beneficial long-range conservation and use of the water resources of the State. It shall investigate the long-range needs of counties and municipalities and other local governments for water supply storage available in federal projects.

(2) The Commission shall advise the Governor as to how the State's present water research activities might be coordinated.

(3) Repealed by Session Laws 2008-143, s. 4, effective July 31, 2008.

(4) The Commission is authorized to call upon the Attorney General for such legal advice as is necessary to the functioning of the Commission.

(5) Recognizing the complexity and difficulties attendant upon the recommendation of the General Assembly of fair and beneficial legislation affecting the use and conservation of water, the Commission shall solicit from the various water interests of the State their suggestions thereon.

(6) The Commission may hold public hearings for the purpose of obtaining evidence and information and permitting discussion relative to water resources legislation and shall have the power to subpoena witnesses therefor.

(7) All recommendations for proposed legislation made by the Commission shall be available to the public.

(8) The Commission shall adopt such rules and regulations as may be necessary to carry out the purposes of this Article.

(9) Any member of the Commission or any person authorized by it, shall have the right to enter upon any private or public lands or waters for the purpose of making investigations and studies reasonably necessary in the gathering of facts concerning streams and watersheds, subject to responsibility for any damage done to property entered.

(10) The Commission is authorized to provide to federal agencies the required assurances, subject to availability of appropriations by the General Assembly or applicable funds or assurances from local governments, of nonfederal cooperation for water supply storage and other congressionally authorized purposes in federal projects.

(11) The Commission is authorized to assign or transfer to any county or municipality or other local government having a need for water supply storage in federal projects any interest held by the State in such storage, upon the assumption of repayment obligation therefor, or compensation to the State, by such local government. The Commission shall also have the authority to reassign or transfer interests in such storage held by local governments, if indicated by the investigation of needs made pursuant to subdivision (1) of subsection (a) of this section, subject to equitable adjustment of financial responsibility.

(b) through (e). Repealed by Session Laws 2008-143, s. 4, effective July 31, 2008. (1959, c. 779, s. 1; 1967, c. 1071, ss. 1, 2; 1973, c. 1262, s. 23; 1991, c. 342, s. 15(b); 1993, c. 539, s. 1033; 1994, Ex. Sess., c. 24, s. 14(c); 2008-143, s. 4.)

Editor's Note. —

Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

Effect of Amendments. — Session Laws 2008-143, s. 4, effective July 31, 2008, deleted subdivision (a)(3), relating to the duty of the Commission to notify any municipality or other governmental unit of potential water shortages or emergencies; and deleted subsections (b) through (e), relating to declaration of water emergency, water emergency powers and duties of the commission, temporary rights of way, and compensation for water allocated during water emergency and temporary rights of way.

§ 143-355. Powers and duties of the Department.

(a) Repealed by Session Laws 1989, c. 603, s. 1.

(b) Functions to Be Performed. — The Department shall:

(1) Request the North Carolina Congressional Delegation to apply to the Congress of the United States whenever deemed necessary for appropriations for protecting and improving any harbor or waterway in the State and for accomplishing needed flood control, shore-erosion prevention, and water-resources development for water supply, water quality control, and other purposes.

(2) Initiate, plan, and execute a long-range program for the preservation, development and improvement of rivers, harbors, and inland ports, and to promote the public interest therein.

(3) Prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the preservation and improvement of rivers, harbors, dredging of small inlets, provision for safe harbor facilities, and public tidewaters of the State.

(4) Make engineering studies, hydraulic computations, hydrographic surveys, and reports regarding shore-erosion projects, dams, reservoirs, and river-channel improvements; to develop, for budget and planning purposes, estimates of the costs of proposed new projects; to prepare bidding documents, plans, and specifications for harbor, coastal, and river projects, and to inspect materials, workmanship, and practices of contractors to assure compliance with plans and specifications.

(5) Cooperate with the United States Army Corps of Engineers in causing to be removed any wrecked, sunken or abandoned vessel or unauthorized obstructions and encroachments in public harbors, channels, waterways, and tidewaters of the State.

(6) Cooperate with the United States Coast Guard in marking out and establishing harbor lines and in placing buoys and structures for marking navigable channels.

(7) Cooperate with federal and interstate agencies in planning and developing water-resource projects for navigation, flood control, hurricane protection, shore-erosion prevention, and other purposes.

(8) Provide professional advice to public and private agencies, and to citizens of the State, on matters relating to tidewater development, river works, and watershed development.

(9) Discuss with federal, State, and municipal officials and other interested persons a program of development of rivers, harbors, and related resources.

(10) Make investigations and render reports requested by the Governor and the General Assembly.

(11) Participate in activity of the National Rivers and Harbors Congress, the American Shore and Beach Preservation Association, the American Watershed Council, the American Water Works Association, the American Society of Civil Engineers, the Council of State Governments, the Conservation Foundation, and other national agencies concerned with conservation and development of water resources.

(12) Prepare and maintain climatological and water-resources records and files as a source of information easily accessible to the citizens of the State and to the public generally.

(13) Formulate and administer a program of dune rebuilding, hurricane protection, and shore-erosion prevention.

(14) Include in the biennial budget the cost of performing the additional functions indicated above.

(15) Initiate, plan, study, and execute a long-range floodplain management program for the promotion of health, safety, and welfare of the public. In carrying out the purposes of this subsection, the primary responsibility of floodplain management rests with the local levels of government and it is, therefore, the policy of this State and of this Department to provide guidance, coordination, and other means of assistance, along with the other agencies of this State and with the local levels of government, to effectuate adequate floodplain management programs.

(b1) The Department is directed to pursue an active educational program of floodplain management measures, to include in each biennial report a statement of flood damages, location where floodplain management is desirable, and suggested legislation, if deemed desirable, and within its capacities to provide advice and assistance to State agencies and local levels of government.

(c) Repealed by Session Laws 1961, c. 315.

(d) Investigation of Coasts, Ports and Waterways of State. — The Department is designated as the official State agency to investigate and cause investigations to be made of the coasts, ports and waterways of North Carolina and to cooperate with agencies of the federal and State government and other political subdivisions in making such investigations. The provisions of this section shall not be construed as in any way interfering with the powers and duties of the Utilities Commission, relating to the acquiring of rights-of-way for the Intra-Coastal Waterway; or to authorize the Department to represent the State in connection with such duties.

(e) Repealed by Session Laws 1998-129, s. 1, effective January 1, 2000.

(f) Samples of Cuttings to Be Furnished the Department When Requested. — Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner by the use of power machinery shall furnish the Department samples of cuttings from such depths as the Department may require from all wells constructed by such person, firm or corporation, when such samples are requested by the Department. The Department shall bear the expense of delivering such samples. The Department shall, after an analysis of the samples submitted, furnish a copy of such analysis to the owner of the property on which the well was constructed; the Department shall not report the results of any such analysis to any other person whatsoever until the person legally authorized to do so authorizes in writing the release of the results of the analysis.

(g) Reports of Each Well Required. — Every person, firm or corporation engaged in the business of drilling, boring, coring, or constructing wells with power machinery within the State of North Carolina shall, within 30 days of the completion of each well, report to the Department on forms furnished by the Department the location, size, depth, number of feet of casing used, method of finishing, and formation log information of each such well. In addition such person, firm or corporation shall report any tests made of each such well including the method of testing, length of test, draw-down in feet and yield in gallons per minute. The person, firm or corporation making such report to the Department shall at the time such report is made also furnish a copy thereof to the owner of the property on which the well was constructed.

(h) Drilling for Petroleum and Minerals Excepted. — The provisions of this Article shall not apply to drillings for petroleum and minerals.

(i) Penalty for Violation. — Any person violating the provisions of subsections (e), (f) and (g) of G.S. 143-355 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall only be punished by a fine of fifty dollars ($50.00). Each violation shall constitute a separate offense.

(j) Miscellaneous Duties. — The Department shall make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State and take such measures as it may consider necessary to promote their development; and to supervise, guide, and control the performance of the duties set forth in subsection (b) of this section and to hold hearings with regard thereto. In connection with administration of the well-drilling law the Department may prepare analyses of well cuttings for mineral and petroleum content.

(k) Water Use Information. — Any person using, withdrawing, diverting or obtaining water from surface streams, lakes and underground water sources shall, upon the request of the Department, file a monthly report with the Department showing the amount of water used, withdrawn, diverted or obtained from such sources. Such report shall be on a form supplied by the Department and shall show the identification of the water well or other withdrawal facility, location, withdrawal rate (measured in gallons per minute), and total gallons withdrawn during the month. Reports required to be filed under this subsection shall be filed on or before the fifteenth day of the month succeeding the month during which the using, withdrawing, diverting or obtaining water required to be reported occurred. This subsection does not apply to withdrawals or uses by individuals or families for household, livestock, or gardens. All reports required under this subsection are provided solely for the purpose of the Department. Within the meaning of this subsection the term "person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, and private or public corporations organized or existing under the laws of this State or any other state or country. In the event of extreme or exceptional drought or other water shortage, the Department may require each local government water system and each large community water system in the affected area to report the amount of water used, withdrawn, diverted, or obtained on a weekly basis and may require the reporting of additional information necessary to assess and manage the drought or water shortage.

(*l*) Local Water Supply Plans. — Each unit of local government that provides public water service or that plans to provide public water service and each large community water system shall, either individually or together with other units of local government and large community water systems, prepare a local water supply plan and submit it to the Department for approval. The Department shall provide technical assistance with the preparation of plans to units of local government and large community water systems upon request and to the extent that the Department has resources available to provide assistance. At a minimum, each unit of local government and large community water system shall include in local water supply plans all information that is readily available to it. Plans shall include present and projected population, industrial development, and water use within the service area; present and future water supplies; an estimate of the technical assistance that may be needed at the local level to address projected water needs; current and future water conservation and water reuse programs; a description of how the local government or large community water system will respond to drought and other water shortage emergencies and continue to meet essential public water supply needs during the emergency; and any other related information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit or large community water system on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by each unit of local government and large community water system that participated in the preparation of the plan.

(m) In order to assure the availability of adequate supplies of good quality water to protect the public health and to support desirable economic growth, the Department shall develop a State water supply plan. The State water supply plan shall include the information and projections required to be included in local plans, a summary of water conservation and water reuse programs described in local plans, a summary of the technical assistance needs indicated by local plans, and shall indicate the extent to which the various local plans are compatible. The State plan shall identify potential conflicts among the various local plans and ways in which local water supply programs could be better coordinated.

(n) The Department of Environment and Natural Resources shall report to the Environmental Review Commission on the implementation of this section and the development of the State water supply plan on or before 1 September of each year. (1959, c. 779, s. 3; 1961, c. 315; 1967, c. 1069, ss. 1-3; c. 1070, s. 1; c. 1071, ss. 3, 4; c. 1117, s. 1; 1973, c. 1262, ss. 23, 28, 86; 1977, c. 771, s. 4; 1981, c. 514, ss. 2, 3; 1989, c. 603, s. 1; 1993, c. 513, s. 7(a); c. 539, s. 1034; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 509, s. 85; 1997-358, ss. 5, 6; 1998-129, s. 1; 1998-168, s. 5; 2001-452, s. 2.7; 2002-167, ss. 1, 2; 2003-387, s. 1; 2008-143, s. 7.)

Editor's Note. —

Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

Effect of Amendments. — Session Laws 2008-143, s. 7, effective July 31, 2008, in subsection (k), added the last sentence; and in subsection (*l*), substituted "Local Water Supply Plans. —" for "For purposes of this subsection, 'community water system' means a community water system, as defined in G.S. 130A-313(10), that regularly serves 1,000 or more service connections or 3,000 or more individuals" at the beginning, inserted "for approval" at the end of the first sentence, and inserted "large" preceding "community water system" each time that it appears.

§ 143-355.1. Drought Management Advisory Council; drought advisories.

(a) The Department shall establish a Drought Management Advisory Council. The purposes of the Council are:

(1) To improve coordination among local, State, and federal agencies; public water systems, as defined in G.S. 130A-313(10); and water users to improve the management and mitigation of the harmful effects of drought.

(2) To provide consistent and accurate information on drought conditions in the State to the U.S. Drought Monitor, the Environmental Management Commission, the Secretary, the Environmental Review Commission, and the public.

(b) The Department shall invite each of the following organizations to designate a representative to serve on the Council:

(1) North Carolina Cooperative Extension Service.
(2) State Climate Office at North Carolina State University.
(3) Public Staff of the Utilities Commission.
(4) Wildlife Resources Commission.
(5) Department of Agriculture and Consumer Services.
(6) Department of Commerce.
(7) Department of Crime Control and Public Safety.
(8) National Weather Service of the National Oceanic and Atmospheric Administration of the United States Department of Commerce.
(9) United States Geological Survey of the United States Department of the Interior.
(10) United States Army Corps of Engineers.
(11) United States Department of Agriculture.
(12) Federal Emergency Management Agency of the United States Department of Homeland Security.

(b1) Representatives designated under subsection (b) of this section shall have expertise or responsibility in meteorology, groundwater and surface water hydrology, water system operation and management, reservoir management, emergency response, or another subject area related to assessment and management of drought impacts.

(c) The Department shall also invite other agencies and organizations that represent water users, including local governments, agriculture, agribusiness, forestry, manufacturing, investor-owned water utilities regulated by the North Carolina Utilities Commission, and others as appropriate, to participate in the work of the Council with respect to particular drought related issues.

(d) The Department shall designate an employee of the Department to serve as Chair of the Council. The Council shall meet at least once in each calendar year in order to maintain appropriate agency readiness and participation. In addition, the Council shall meet on the call of the Chair to respond to drought conditions. The provisions of Article 33C of this Chapter apply to meetings of the Council.

(e) In order to provide accurate and consistent information to assist State agencies, local governments, and other water users in taking appropriate drought response actions, the Council may issue drought advisories that designate:

(1) Specific areas of the State in which drought conditions are impending.
(2) Specific areas of the State that are suffering from drought conditions.

(3) The level of severity of drought conditions based on the drought categories used in the U.S. Drought Monitor or the drought designation approved by the Secretary under subsection (f) of this section.

(f) Drought designations by the U.S. Drought Monitor shall be the default designations for drought advisories issued under subsection (e) of this section. The Council shall publish those drought designations for each county. If more than one drought designation applies to a county, the drought designation for the county shall be the highest drought designation that applies to at least twenty-five percent (25%) of the land area of the county. The Council may recommend a drought designation for a county that is different from the designation based on the U.S. Drought Monitor if the U.S. Drought Monitor does not accurately reflect localized conditions because of differences in scale or because the U.S. Drought Monitor does not consider one or more of the indicators of drought identified in this subsection. In recommending a drought designation that differs from the U.S. Drought Monitor designation, the Council shall consider stream flows, ground water levels, the amount of water stored in reservoirs, weather forecasts, the time of year, and other factors that are relevant to determining the location and severity of drought conditions.

(f1) The Secretary shall accept the Council's recommendation to adopt a drought designation for a county that is different from the designation based on the U.S. Drought Monitor if the Secretary finds that the indicators of drought identified by the Council under subsection (f) of this section support the designation recommended by the Council.

(g) The Council shall report on the implementation of this section to the Secretary, the Governor, and the Environmental Review Commission no later than 1 October of each year. The report shall include a review of drought advisories issued by the Council and any recommendations to improve coordination among local, State, and federal agencies; public water systems; and water users to improve the management and mitigation of the harmful effects of drought. (2003-387, s. 2; 2004-195, s. 2.5; 2008-143, s. 16.)

Editor's Note. — Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

Effect of Amendments. — Session Laws 2008-143, s. 16, effective July 31, 2008, rewrote subdivision (a)(2); added subsection (b1); in subsection (c), substituted "investor-owned water utilities regulated by the North Carolina Utilities Commission, and others as appropriate" for "and others as appropriate, to designate a representative to serve on the Council or"; in the introductory language of subsection (e), substituted "State agencies, local governments" for "local governments"; in subdivision (e)(3), added "based on the drought categories used in the U.S. Drought Monitor or the drought designation approved by the Secretary under subsection (f) of this section"; rewrote subsection (f); and added subsection (f1).

§ 143-355.2. Water conservation measures for drought.

(a) Each unit of local government that provides public water service and each large community water system shall develop and implement water conservation measures to respond to drought or other water shortage conditions as provided in this section. Pursuant to G.S. 143-355(*l*), water conservation measures to respond to drought or other water shortage conditions shall be set out in a water shortage response plan and submitted to the Department for review and approval. The Department shall approve the water shortage response plan if the plan meets all of the following criteria:

(1) The plan includes tiered levels of water conservation measures or other response actions based on the severity of water shortage conditions.

(2) Each tier of water conservation measures shall be based on increased severity of drought or water shortage conditions and will result in more stringent water conservation measures.

(3) All other requirements of rules adopted by the Commission pursuant to S.L. 2002-167.

(4) Does not contain any provision that meters or regulates private drinking water wells, as defined in G.S. 87-85.

(b) The Department may require a unit of local government that provides public water service or a large community water system to implement the more stringent water conservation measures described in subsection (d) of this section if the Department makes written findings that any county, as determined by subsection (e) of this section, in which the source of water for the public water system operated by the unit of local government or by a large community water system is in:

(1) Severe, extreme, or exceptional drought, and the Department finds all of the following:

a. The unit of local government that provides water service or large community water system has not begun implementation of any level of water conservation measures set out in the water shortage response plan.

b. Implementation of measures is necessary to minimize the harmful impacts of drought on public health, safety, and the environment, including the potential impacts of drought or other water shortage on interconnected water systems and other water systems withdrawing from the same water source, or

(2) Extreme or exceptional drought, and the Department finds that the unit of local government that provides water service or large community water system has implemented the measures required under the water shortage response plan for the appropriate tier of water conservation measure for 30 days or more and that implementation of the measures required has not reduced water use in an amount sufficient to minimize the harmful impacts of drought on public health, safety, and the environment, including the potential impact of drought or other water shortage on interconnected water systems and other water systems withdrawing from the same water source.

(c) In making the findings required under subsection (b) of this section, the Department shall consider the:

(1) Hydrological drought conditions.

(2) Drought forecast.

(3) Reductions in water use achieved under water conservation measures in effect.

(4) Availability of other water supply sources and other indicators of the extent and severity of drought impacts.

(5) Economic impacts on the community to implement more stringent water conservation measures.

(6) Conservation measures of all registered water withdrawals within the same 8 digit hydrologic unit code established by the U.S. Geological Survey to the extent the Department is able to document those measures.

(d) Based on the findings required under subsection (b) of this section, the Department may require the unit of local government that provides public water service or the large community water system to begin implementation of its plan or to implement the next tier of water shortage response measures. If, after consultation with the unit of local government or the large community water system, the Department makes a written finding that the next tier of measures set out in the plan, together with any other reasonable steps that may be available to reduce water use, will not reduce water use in an amount sufficient to minimize the harmful impacts of drought on public health, safety, and the environment, including the potential impact of drought or other water shortage on interconnected water systems and other water systems drawing from the same water source, then the Department may require implementation of the tier that is two levels more stringent than the tier being implemented.

(e) For purposes of this section, the drought designation for an area shall be the U.S. Drought Monitor designation for the county in which the water source is located as published by the Drought Management Advisory Council. The Secretary may approve a county drought designation that is different from the U.S. Drought Monitor designation pursuant to G.S. 143-355.1(f1). If the water source is located in more than one county and the counties have different drought designations, the Council shall recommend to the Secretary the drought designation to be applied to water systems that withdraw water from the water source. The recommendation of the Council shall be based on the drought indicators identified in G.S. 143-355.1(f) as applied to the water source.

(f) A unit of local government that provides public water service or a large community water system that does not have a water shortage response plan shall implement the default water conservation measures for extreme and exceptional drought set out in the rules adopted by the Commission pursuant to S.L. 2002-167.

(g) A unit of local government that provides water service or a large community water system that does not have an approved water shortage response plan shall implement the default water conservation measures specified in subsection (f) of this section within 10 days following a drought designation that requires implementation of water conservation measures. A water shortage response plan is presumed to be approved until the Department notifies the unit of local government or large community water system that the plan has been disapproved. A unit of local government that provides public water service and a large community water system shall be deemed to be in compliance with this section if, within 10 days after water shortage conditions identified in the plan require implementation of water conservation measures, the water system begins implementation of the water conservation measures required by the plan.

(h) Water conservation measures imposed by a unit of local government that provides public water service or by a large community water system may be more stringent than the minimum water conservation measures required under this section.

(i) A unit of local government that provides public water service and a large community water system shall report that the water system has begun implementation of water conservation measures set out in the water system's water shortage response plan or the default water conservation measures to the Department within 72 hours after beginning implementation.

(j) This section shall not be construed to authorize or require the implementation of water conservation management measures that conflict with or are superseded by the provisions of any order of a federal or State court or administrative agency, any interstate agreement governing the allocation of water to which the State is a party, or any license for a hydroelectric generating facility issued by the Federal Energy Regulatory Commission; including, without limitation, any protocol or subsidiary agreement that may be part of or incorporated in any such order, interstate agreement, or operating license. (2008-143, s. 5.)

Editor's Note. — Session Laws 2008-143, s. 21, which made this section effective July 31, 2008, provides in part: "Water Shortage Response Plans revised to comply with G.S. 143-355.2, as enacted by Section 5 of this act, shall be submitted no later than 1 July 2009."

Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

§ 143-355.3. Water shortage emergency powers.

(a) Declaration of Water Shortage Emergency. — If, after consultation with the affected water system and the unit of local government with jurisdiction over the area served by the water system, the Secretary determines that the needs of human consumption, necessary sanitation, and public safety require emergency action, the Secretary shall provide the Governor with written findings setting out the basis for declaration of a water shortage emergency. The Governor shall have the authority to declare a water shortage emergency in the area affected by the water shortage emergency, which may include both the water system experiencing a water shortage emergency and the area served by a water system required under subdivision (1) of subsection (b) of this section to provide water in response to the water shortage emergency. No emergency period shall exceed 30 days, but the Governor may declare successive emergencies based upon the written findings of the Secretary.

(b) Water Shortage Emergency Powers and Duties. — Whenever, pursuant to this Article, the Governor declares the existence of a water shortage emergency within a particular area of the State, the Secretary shall have the powers and duties set out in subdivisions (1), (2), and (3) of this subsection. These powers may only be exercised within the designated water shortage emergency area, after the Secretary has consulted with the affected water systems and determined that the water shortage emergency cannot be effectively managed in the absence of exercising these powers, and only for the period of the water shortage emergency. Under these circumstances, the Secretary has the power and duty to:

(1) Require any water system that has water supply in excess of that required to meet the essential water uses of its customers to provide water to a water system experiencing a water shortage emergency. The Secretary shall give preference to diversion of water from a water system within the same river basin as the water system that is experiencing a water shortage emergency. A diversion of water that requires a certificate under G.S. 143-215.22L shall meet the requirements of that section. The amount required to be supplied shall be limited to the amount necessary to supply essential water uses within the receiving system. The required diversion of waters shall cease upon the termination of the water shortage emergency.

(2) Adopt rules governing the conservation and use of water within the water shortage emergency area as shall be necessary to maintain essential water use within the water shortage emergency area. Before such rules and regulations shall become effective, they shall be published in two consecutive issues of a daily newspaper generally circulated in the emergency area.

(3) Adopt rules governing conservation and use of water within the service area of the water system from which water is being diverted as shall be necessary to maintain essential water uses in the system while supplying water to the water shortage emergency area.

(c) Temporary Rights-of-Way. — A water system that is affected by a water shortage emergency is authorized to lay necessary temporary waterlines for the period of a declared water shortage emergency across, under, or above any and all properties to connect the water system experiencing a water shortage emergency to an emergency intake in a new water source or to interconnect the water system to a supplying water or wastewater system without first acquiring right-of-way. The Department shall expedite the approval of temporary waterlines needed to provide emergency water supply under this section. Temporary waterlines installed under this section shall be removed within 90 days following the end of the emergency period except that the Secretary may, for good cause, authorize a 30-day extension.

(d) Compensation for Water Allocated During Water Shortage Emergency and Temporary Rights-of-Way. — Whenever the Secretary, pursuant to this Article, has ordered any diversion of water, the receiving water or wastewater system shall reimburse the supplying water system for the cost of the water. The cost charged to the receiving system shall not exceed one hundred ten percent (110%) of the retail cost that would be charged to a customer of the supplying system for an equivalent amount of water and any additional costs incurred by the supplying system for alterations to its infrastructure or water treatment to effectuate the diversion except as provided under an interlocal agreement. Unless liability is otherwise assigned in an interlocal agreement, the receiving water system shall be liable to all persons suffering any loss or damage caused by or resulting from the laying of temporary waterlines to effectuate the diversion. Within 10 days of placing the temporary waterlines, the water system that is liable shall institute a civil action in accordance with the procedures set out under Article 9 of Chapter 136 of the General Statutes to compensate the property owners for any taking caused by or resulting from the laying of temporary waterlines, with the water system that is liable having the role of the Department of Transportation and the governing board of the water system that is liable having the role of the Secretary of Transportation under Article 9 of Chapter 136 of the General Statutes. The placing of temporary waterlines pursuant to this section is not subject to the provisions of G.S. 153A-15.

(e) This section shall not be construed to authorize or require any actions that conflict with or are superseded by the provisions of any order of a federal or State court or administrative agency, any interstate agreement governing the allocation of water to which the State is a party, or any license for a hydroelectric generating facility issued by the Federal Energy Regulatory Commission; including, without limitation, any protocol or subsidiary agreement that may be part of or incorporated in any such order, interstate agreement, or operating license. (2008-143, s. 8.)

Editor's Note. — Session Laws 2008-143, s. 21, made this section effective July 31, 2008.

Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

§ 143-355.4. (Effective July 1, 2009) Water system efficiency.

(a) Local government water systems and large community water systems shall require separate meters for new in-ground irrigation systems that are connected to their systems.

(b) To be eligible for State water infrastructure funds from the Drinking Water Revolving Fund or the Drinking Water Reserve Fund or any other grant or loan of funds allocated by the General Assembly whether the allocation of funds is to a State agency or to a nonprofit organization for the purpose of extending waterlines or expanding water treatment capacity, a local government or large community water system must demonstrate that the system:

(1) Has established a water rate structure that is adequate to pay the cost of maintaining, repairing, and operating the system, including reserves for payment of principal and interest on indebtedness incurred for maintenance or improvement of the water system during periods of normal use and periods of reduced water use due to implementation of water conservation measures. The funding agency shall apply guidelines developed by the State Water Infrastructure Commission in determining the adequacy of the water rate structure to support operation and maintenance of the system.

(2) Has implemented a leak detection and repair program.

(3) Has an approved water supply plan pursuant to G.S. 143-355.

(4) Meters all water use except for water use that is impractical to meter, including, but not limited to, use of water for firefighting and to flush waterlines.

(5) Does not use a rate structure that gives residential water customers a lower per-unit water rate as water use increases.

(6) Has evaluated the extent to which the future water needs of the water system can be met by reclaimed water.

(7) Has implemented a consumer education program that emphasizes the importance of water conservation. (2008-143, s. 9.)

Editor's Note. — Session Laws 2008-143, s. 21, made this section effective July 1, 2009.

Session Laws 2008-143, s. 18, provides: "The Department of Environment and Natural Resources shall develop recommendations, in consultation with the technical working group that consists of scientists from the University of North Carolina and industry experts, for water efficiency standards for water-using fixtures in residential and commercial building and in-ground irrigation systems. The Department shall also develop recommendations for efficient metering of water use by local government and large community water systems. The Department shall submit its recommendations to the Commissioner of Insurance, the Chair of the Building Code Council, and the Environmental Review Commission no later than January 1, 2009."

Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

§ 143-355.5. Water reuse; policy; rule making.

(a) Water Reuse Policy. — It is the public policy of the State that the reuse of treated wastewater or reclaimed water is critical to meeting the existing and future water supply needs of the State. The General Assembly finds that reclaimed water systems permitted and operated under G.S. 143-215.1(d2) in an approved wastewater reuse program can provide water for many beneficial purposes in a way that is both environmentally acceptable and protective of public health.

(b) Rule Making. — The Commission shall encourage and promote safe and beneficial reuse of treated wastewater as an alternative to surface water discharge. The Commission shall adopt rules to:

(1) Identify acceptable uses of reclaimed water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.

(2) Facilitate the permitting of reclaimed water systems.

(3) Establish standards for reclaimed water systems that are adequate to prevent the direct distribution of reclaimed water as potable water. (2008-143, s. 10.)

Editor's Note. — Session Laws 2008-143, s. 21, made this section effective July 31, 2008.

Session Laws 2008-143, s. 21, made Session Laws 2008-143, s. 14, which is noted below, effective July 31, 2008, and provided in part: "Subsection (c) of Section 14 of this act [2008-143] expireswhen rules adopted pursuant to subsection (b) of Section 14 of this act become effective."

Session Laws 2008-143, s. 14, provides: "(a) For purposes of this section, 'gray water' means wastewater removed from household wash basins, bathtubs, and showers.

"(b) The Commission for Health Services shall adopt rules to authorize the use of gray water during periods of drought to hand water trees, shrubs, and inedible plants on single-family residential property. The rules shall encourage the use of gray water as provided in this section while protecting public health, safety, welfare, and the environment. In developing the rules, the Commission shall review the provisions set out in subsection (c) of this section.

"(c) Notwithstanding G.S. 130A-335(a), untreated gray water may be used in periods of drought to hand water trees, shrubs, and inedible plants on single-family residential property under the following conditions:

"(1) Gray water shall be applied as soon as practicable. Untreated gray water should not be stored for later use.

"(2) Gray water containing hazardous chemicals including, but not limited to, residue from solvents shall not be used.

"(3) Use of untreated gray water is restricted to the residential property where the gray water originates. Untreated gray water shall not be allowed to run off onto adjoining property, roadways, or into drainage features such as ditches and storm drains.

"(4) Untreated gray water shall be applied using buckets, watering cans, or other handheld containers. Gray water may not be used in an irrigation system unless the gray water has been treated in accordance with standards set out in the State Plumbing Code.

"(5) Gray water shall not be applied closer than 100 feet to surface waters or a water supply well."

Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

§ 143-355.6. Enforcement.

(a) The Secretary may assess a civil penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) against any person who:

(1) Fails to report water use or other information required under G.S. 143-355(k).

(2) Fails to act in accordance with the terms, conditions, or requirements of an order issued by the Secretary under G.S. 143-355.3.

(3) Violates any provision of this Article or any rule adopted by the Commission, the Department, or the Secretary implementing this Article.

(b) For each willful action or failure to act for which a penalty may be assessed under this section, the Secretary may consider each day the action or inaction continues after notice is given of the violation as a separate violation. A separate penalty may be assessed for each separate violation.

(c) The Secretary may assess a civil penalty of not more than ten thousand dollars ($10,000) per month against a unit of local government that provides public water service or a large community water system that fails to implement the water conservation measures set out in the water shortage response plan approved by the Department under G.S. 143-355.2, measures required by the Department under subsections (b) and (d) of G.S. 143-355.2, or the default measures required under rules adopted by the Commission under S.L. 2002-167. The amount of the civil penalty shall be based on the factors set out in G.S. 143B-282.1(b). The Secretary may remit a civil penalty based on the factors set out in G.S. 143B-282.1(c)(1).

(d) The violation of emergency water conservation rules adopted by the Secretary pursuant to G.S. 143-355.3(b) is a Class 1 misdemeanor.

(e) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons for the assessment by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment. (2008-143, s. 11.)

Editor's Note. — Session Laws 2008-143, s. 21, made this section effective December 1, 2008, and applicable to offenses committed on or after that date.

Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

ARTICLE 49A.

Equal Employment Practices.

§ 143-422.1. Short title.

CASE NOTES

Private Right of Action. —

Employee's request that a court enjoin defendants, an employer and a corporation, from engaging in future discrimination based on race in the spirit of G.S. 143-422.1 was dismissed because if the court granted the requested relief under G.S. 143-422.1, then the court would have been creating a private cause of action, and such a private cause of action would have contradicted North Carolina law because neither the North Carolina Supreme Court nor the North Carolina Court of Appeals had recognized a private cause of action under G.S. 143-422.1. Roberts v. Wal-Mart Stores, Inc., 503 F. Supp. 2d 787, 2007 U.S. Dist. LEXIS 64857 (E.D.N.C. 2007).

§ 143-422.2. Legislative declaration.

CASE NOTES

Pregnancy Discrimination. — Because there was no evidence that the corporate president was aware of the employee's pregnancy until after the decision to terminate her had been made, the employee could not prove that her pregnancy was a factor in the decision to include her in the reduction in force; as such, the employee could not make a prima facie case of pregnancy discrimination, and the employee's pregnancy discrimination claim under state law — to the extent that such a claim existed — failed. Sweeney v. MARC Global, Inc., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 11490 (W.D.N.C. Feb. 4, 2008).

Private Right of Action. —

Former employee who asserted claims against her former employer for retaliation and discrimination on the basis of age, race, and sex failed to state a claim under the North Carolina Equal Employment Practices Act (NCEEPA), G.S. 143-422.2, because North Carolina did not recognize a private cause of action under the NCEEPA. Bratcher v. Pharm. Prod. Dev., Inc., 545 F. Supp. 2d 533, 2008 U.S. Dist. LEXIS 28276 (E.D.N.C. 2008).

Employee's retaliation claim under North Carolina's Equal Employment Practices Act (NCEEPA),G.S. 143-422.2, encountered a fatal flaw because the NCEEPA did not create a private right of action, it was only applicable to common law wrongful discharge claims or in connection with other specific statutory remedies. In addition, even if the NCEEPA did provide a private right of action, the statute did not express a public policy with respect to retaliation for opposition to any form of discriminatory practice. Strickland v. Jewell, 562 F. Supp. 2d 661, 2007 U.S. Dist. LEXIS 84612 (M.D.N.C. 2007).

Applied in Faulkner v. Tyco Elecs. Corp., 552 F. Supp. 2d 546, 2008 U.S. Dist. LEXIS 25772 (M.D.N.C. 2008).

ARTICLE 51B.

North Carolina Federal Tax Reform Allocation Committee.

§ 143-433.6. Legislative findings.

(a) The General Assembly finds and determines that the Tax Reform Act of 1984 established a federal volume limitation upon the aggregate amount of "private activity bonds" that may be issued by each state; that, pursuant to Section 103(n) of the Internal Revenue Code of 1954, as amended, a previous Governor of North Carolina issued Executive Order 113 proclaiming a formula for allocating the federal volume limitation for North Carolina; that on October 22, 1986, the Tax Reform Act of 1986, hereinafter referred to as the "Tax Reform Act", was enacted; that the Tax Reform Act (i) establishes a new unified limitation for private activity bonds on a state by state basis, (ii) establishes a new definition of the types of private activity bonds to be included under those new limitations, (iii) establishes a new low-income housing credit to induce the construction of and the improvement of housing for low-income people, and (iv) limits the aggregate use of this low-income housing credit on a state by state basis; that the Tax Reform Act provides for federal formulas for the allocation of these "state by state" resources, and also provides for states which cannot use the federal formula for allocation to set allocation procedures and formulas which are more appropriate for the individual states; that the Tax Reform Act gives authority for the legislature of each state to formulate and execute plans for allocation; and that Section 146 of the Internal Revenue Code of 1986, as amended, and Section 42 of the Internal Revenue Code of 1986, as amended, will require continued inquiry and study in the ways in which North Carolina can best and most fairly manage and utilize resources provided therein.

(b) The General Assembly further finds and determines that the Economic Growth and Tax Relief Reconciliation Act of 2001 added new subsections (a)(13) and (k) to section 142 of the Internal Revenue Code of 1986, as amended, which (i) establish a new type of private activity bond that can be issued to finance "qualified public educational facilities," (ii) establish an annual aggregate limitation on the face amount of qualified public educational facility bonds that may be issued on a state-by-state basis, (iii) provide that each state may allocate the annual aggregate limitation for any calendar year in such manner as each state determines appropriate, and (iv) provide for an elective carryforward by each state of the unused annual aggregate limitation; and that subsections (a)(13) and (k) will require continued inquiry and study in the ways in which North Carolina can best and most fairly manage and utilize the resource provided therein. (1987, c. 588, s. 1; 2008-204, s. 6.1.)

Effect of Amendments. — Session Laws 2008-204, s. 6.1, effective August 8, 2008, designated the previously existing provisions as subsection (a) and added subsection (b).

§ 143-433.8. Duties.

The Committee shall perform the following duties:

(1) Manage the allocation of private activity bonds, low-income housing credits, and qualified public educational facility bonds and receive advice from bond issuers, elected officials, and the General Assembly.

(2) Continue to monitor bond markets, economic development financing trends, school financing trends, housing markets, and tax incentives available to induce events and programs favorable to North Carolina, its cities and counties, and individual citizens.

(3) Continue to study the ways in which North Carolina can best and most fairly manage and utilize the allocation of private activity bonds, low-income housing credits, and qualified public educational facility bonds.

(4) Report to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Revenue Laws Study Committee as requested and on not less than an annual basis. The annual report is due by November 1 of each year. (1987, c. 588, s. 3; 2008-204, s. 6.2.)

Effect of Amendments. — Session Laws 2008-204, s. 6.2, effective August 8, 2008, in the introductory language, substituted "shall perform" for "may perform"; in subdivision (1), substituted "private activity bonds, low-income housing credits, and qualified public educational facility bonds" for "tax exempt private activity bonds and low-income housing credits"; in subdivision (2), inserted "school financing trends"; in subdivision (3), substituted "private activity bonds, low-income housing credits, and qualified public educational facility bonds" for "private activity bonds and low-income housing credits"; and in subdivision (4), substituted "the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Revenue Laws Study Committee" for "and the Speaker of the House of Representatives" and added the last sentence.

§ 143-433.9. Allocation.

(a) To provide for the orderly and prompt issuance of private activity bonds and qualified public educational facility bonds, there are hereby proclaimed formulas for allocating the following: (i) the unified volume limitation, (ii) the state housing credit ceiling, and (iii) the annual aggregate limitation on the face amount of qualified public educational facility bonds. The unified volume limitation for all issues of private activity bonds, other than qualified public educational facility bonds, in North Carolina shall be considered as a single resource to be allocated under this Article. The annual aggregate limitation on the face amount of qualified public educational facility bonds for all issues in North Carolina shall be considered as a single resource to be allocated under this Article. The Committee shall issue the following: (i) allocations of the unified volume limitation, (ii) allocations of the state housing credit ceiling, and (iii) allocations of the aggregate limitation on the face amount of qualified public educational facility bonds. The Committee shall set forth procedures for making such allocations and in the making of such allocations shall take into consideration the best interest of the State of North Carolina with regard to the economic development, school facility needs, and general prosperity of the people of North Carolina. The Committee shall make all elective carryforwards of the unused unified volume limitation and the annual aggregate limitation on the face amount of qualified public educational facility bonds on behalf of the State.

(b) In administering the low-income housing credit program, the Committee shall adopt a Qualified Allocation Plan (the Plan) as required by 26 U.S.C. § 42(m) annually. Solely with respect to the adoption of the Plan, the Committee is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of the Plan, the Committee shall:

(1) Publish the proposed Plan in the North Carolina Register at least 30 days prior to the adoption of the final Plan;

(2) Notify any person who has applied for the low-income housing credit in the previous year and any other interested parties of its intent to adopt the Plan;

(3) Accept oral and written comments on the proposed Plan; and

(4) Hold at least one public hearing on the proposed Plan. (1987, c. 588, s. 4; 2001-299, s. 1.1; 2008-204, s. 6.3.)

Effect of Amendments. — Session Laws 2008-204, s. 6.3, effective August 8, 2008, rewrote subsection (a).

ARTICLE 52.

Pesticide Board.

Part 1. Pesticide Control Program: Organization and Functions.

§ 143-437. Pesticide Board; functions.

Editor's Note. — Session Laws 2008-212, s. 2 provides: "The Pesticide Board shall adopt rules to implement the recommendations of the Governor's Task Force on Preventing Agricultural Pesticide Exposure, requiring recording of the specific time of day when each pesticide application was completed and extending the retention period for pesticide application records for all pesticides covered under the Worker Protection Standards for Agricultural Pesticides from 30 days to two years."

Part 5. General Provisions.

§ 143-461. General powers of Board.

Editor's Note. — Session Laws 2008-212, s. 2, provides: "The Pesticide Board shall adopt rules to implement the recommendations of the Governor's Task Force on Preventing Agricultural Pesticide Exposure, requiring recording of the specific time of day when each pesticide application was completed and extending the retention period for pesticide application records for all pesticides covered under the Worker Protection Standards for Agricultural Pesticides from 30 days to two years."

§ 143-466. Records; information; inspection; enforcement.

Editor's Note. — Session Laws 2008-212, s. 2, provides: "The Pesticide Board shall adopt rules to implement the recommendations of the Governor's Task Force on Preventing Agricultural Pesticide Exposure, requiring recording of the specific time of day when each pesticide application was completed and extending the retention period for pesticide application records for all pesticides covered under the Worker Protection Standards for Agricultural Pesticides from 30 days to two years."

ARTICLE 68.

Regulation of Boxing.

§ 143-652.2. Boxing Advisory Commission.

(a) Creation. — The Boxing Advisory Commission is created within the Department of Crime Control and Public Safety to advise the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety concerning matters regulated by this Article. The Commission shall consist of six voting members and two nonvoting advisory members. All the members shall be residents of North Carolina. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the President Pro Tempore of the Senate for an initial term of three years.
(3) One voting member shall be appointed by the Speaker of the House of Representatives for an initial term of three years.
(4) One voting member shall be appointed by the Secretary of Crime Control and Public Safety for an initial term of three years.
(5) One voting member shall be appointed by the Lieutenant Governor for an initial term of two years.
(6) One voting member shall be appointed by the Tribal Council of the Eastern Band of the Cherokee for an initial term of three years.
(7) One nonvoting advisory member shall be appointed by the Speaker of the House of Representatives for an initial term of one year, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.
(8) One nonvoting advisory member shall be appointed by the President Pro Tempore of the Senate for an initial term of one year, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

Notwithstanding the schedule above in subdivisions (1), (5), (7), and (8) of this subsection, if any former member of the North Carolina Boxing Commission is appointed to the initial membership, that person shall serve an initial term of three years. The member appointed pursuant to subdivision (6) of this subsection may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

The two nonvoting advisory members appointed pursuant to subdivisions (7) and (8) of this subsection shall advise the Commission and the Division on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and to the Division for its approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of Crime Control and Public Safety shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of Crime Control and Public Safety for cause. Members of the Commission are subject to the conflicts of interest requirements of 15 U.S.C. § 6308 (contained in the Professional Boxing Safety Act of 1996, as amended). Each member, before entering upon the duties of a member, shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of Crime Control and Public Safety.

(b) Vacancies. — Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. — Meetings of the Commission shall be called by the chair or by any two members of the Commission, and meetings shall be held at least quarterly. Any three voting members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists.

(d) Review Authority of the Commission. — The Commission shall review existing rules adopted under this Article and shall from time to time make recommendations to the Division for changes or addition to such rules. Any proposals for change, amendment, addition, or deletion to those rules shall be submitted by the Division to the Commission for its comments prior to approval.

(e) Compensation. — None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. — The Secretary of Crime Control and Public Safety shall provide staff assistance to the Commission.

(g) Initial appointments to the Commission under this section shall be for terms commencing July 1, 2007. (2007-528, s. 1; 2008-187, s. 22.)

Effect of Amendments. — Session Laws 2008-187, s. 22, effective August 7, 2008, deleted "reenacted" preceding "section shall be" in subsection (g).

Article 75.

Tobacco Trust Fund.

§ 143-722. Reporting.

(a) The chair of the Commission shall report each year by November 1 to the Joint Legislative Commission on Governmental Operations and the chairs of the House and Senate Appropriations Committees regarding the implementation of this Article, including a report on funds disbursed during the fiscal year by amount, purpose, and category of recipient, and other information as requested by the Joint Legislative Commission on Governmental Operations. A written copy of the report shall also be sent to the Legislative Library by November 1 each year.

(b) Any non-State entity as that term is defined in G.S. 143C-1-1 that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S. 143C-6-14. (2000-147, s. 3; 2004-196, s. 4; 2006-203, s. 99; 2008-187, s. 23.)

Editor's Note. —
The Editor's note in the main volume regarding the reference in subsection (b) to "G.S. 143-6-14" can now be disregarded. Session Laws 2008-187, s. 23, corrected the reference.

Effect of Amendments. —
Session Laws 2008-187, s. 23, effective August 7, 2008, substituted "G.S. 143C-6-14" for "G.S. 143-6-14" in subsection (b).

Chapter 143A.

State Government Reorganization.

Article 5.

Department of Public Instruction.

Sec.
143A-44.1. Creation.

ARTICLE 5.

Department of Public Instruction.

§ 143A-44.1. Creation.

There is hereby created a Department of Public Instruction. The head of the Department of Public Instruction is the State Board of Education. Any provision of G.S. 143A-9 to the contrary notwithstanding, the appointment of the State Board of Education shall be as prescribed in Article IX, Section (4)(1) of the Constitution. (1995, c. 72, s. 3; 2008-187, s. 24.)

Effect of Amendments. — Session Laws 2008-187, s. 24, effective August 7, 2008, substituted "Article IX, Section (4)(1)" for "Article IV, Section 4(1)."

Chapter 143B.

Executive Organization Act of 1973.

Article 2.

Department of Cultural Resources.

Part 30. African-American Heritage Commission.

Sec.
143B-135. Commission established.

Article 3.

Department of Health and Human Services.

Part 1. General Provisions.

143B-139.5B. Department of Health and Human Services — provision for joint training.

Part 5A. S.O.S. Program.

143B-152.4. Eligible applicants; application for grants.

Part 10B. Early Childhood Initiatives.

143B-168.15. Use of State funds.

Part 13A. Interagency Coordinating Council for Children
with Disabilities from Birth
to Five Years of Age.

143B-179.5A. [Repealed.]

Article 6.

Department of Correction.

Part 3. Parole Commission.

143B-266. Post-Release Supervision and Parole Commission — creation, powers and duties.

Article 6A.

North Carolina State-County Criminal Justice Partnership Act.

143B-273.15. Funding formula.
143B-273.15A. Reallocation of unspent or unclaimed funds.

Article 7.

Department of Environment and Natural Resources.

Part 1. General Provisions.

143B-279.12. One-stop permits for certain environmental permits.

Sec.
143B-279.13. Express permit and certification reviews.
143B-279.15. Report on One-Stop Permitting Program and Express Permitting Program.

Article 8.

Department of Transportation.

Part 2. Board of Transportation.

143B-350. Board of Transportation — organization; powers and duties, etc.

Article 9.

Department of Administration.

Part 10D. Sexual Assault and Rape Crisis Center Fund.

143B-394.21. Sexual Assault and Rape Crisis Center Fund.

Part 25. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

143B-426.24. (Effective until July 1, 2009) Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.
143B-426.24. (Effective July 1, 2009) North Carolina Public Employee Deferred Compensation Plan.

Article 10.

Department of Commerce.

Part 2. Economic Development.

143B-437.08. Development tier designation.
143B-437.11. [Recodified.]
143B-437.012. Job Maintenance and Capital Development Fund.

Part 2D. North Carolina Rural Redevelopment Authority.

143B-437.20 through 143B-437.23. [Repealed.]
143B-437.26 through 143-437.33. [Repealed.]

Part 2F. e-NC Initiative.

143B-437.45. (This part has a delayed repeal date. See notes.) Definitions.

Part 2K. North Carolina Certified Retirement Community Program.

143B-437.100. (Effective July 1, 2010) North Carolina Certified Retirement

Sec.
Community Program — creation; powers and duties.
143B-437.101. (Effective July 1, 2010) North Carolina Certified Retirement Community Program — administration.

Article 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

143B-476. Department of Crime Control and Public Safety — head; powers and duties as to emergencies and disasters; other powers and duties.
143B-479. Governor's Crime Commission — powers and duties.

Part 3A. Assistance Program for Victims of Rape and Sex Offenses.

143B-480.2. Victim assistance.
143B-480.3. Reduction of benefits; restitution; actions.

Part 5A. North Carolina Center for Missing Persons.

Sec.
143B-499.8. North Carolina Silver Alert System established.

Article 12.

Department of Juvenile Justice and Delinquency Prevention.

Part 2. General Provisions.

143B-515. Definitions.
143B-516. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.
143B-519. [Repealed.]

Part 6. Juvenile Crime Prevention Councils.

143B-543. Legislative intent.
143B-549. Powers and duties.

Part 7. State Advisory Council on Juvenile Justice and Delinquency Prevention.

143B-556, 143B-557. [Repealed.]

ARTICLE 2.

Department of Cultural Resources.

Part 30. African-American Heritage Commission.

§ 143B-135. Commission established.

(a) Creation and Duties. — There is created the African-American Heritage Commission in the Department of Cultural Resources to advise and assist the Secretary of Cultural Resources in the preservation, interpretation, and promotion of African-American history, arts, and culture. The Commission shall have the following powers and duties:

(1) To advise the Secretary of Cultural Resources on methods and means of preserving African-American history, arts, and culture.
(2) To promote public awareness of historic buildings, sites, structures, artwork, and culture associated with North Carolina's African-American heritage through special programs, exhibits, and publications.
(3) To support African-American heritage education in elementary and secondary schools in coordination with North Carolina Public Schools.
(4) To build a statewide network of individuals and groups interested in the preservation of African-American history, arts, and culture.
(5) To develop a program to catalog, preserve, assess, and interpret all aspects of African-American history, arts, and culture.
(6) To advise the Secretary of Cultural Resources upon any matter the Secretary may refer to it.

(b) Composition and Terms. — The Commission shall consist of 10 members who shall serve staggered terms. The initial board shall be selected on or before October 1, 2008, as follows:

(1) Four appointed by the Governor, two of whom shall serve terms of three years, one of whom shall serve a term of two years, and one of

whom shall serve a term of one year. At least one appointee shall be a member of the North Carolina Historical Commission.

(2) Three appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall serve a term of three years, one of whom shall serve a term of two years, and one of whom shall serve a term of one year.

(3) Three appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall serve a term of three years, one of whom shall serve a term of two years, and one of whom shall serve a term of one year.

Upon the expiration of the terms of the initial Commission members, each member shall be appointed for a three-year term and shall serve until a successor is appointed.

(c) Vacancies. — A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. — The Commission may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from participating in the official business of the Commission until the charges have been resolved.

(e) Officers. — The chair shall be designated by the Governor from among the members of the Commission to serve as chair at the pleasure of the Governor. The Commission shall elect annually from its membership a vice-chair and other officers deemed necessary by the Commission to carry out the purposes of this Article.

(f) Meetings; Quorum. — The Commission shall meet at least semiannually to conduct business. The Board shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Commission members shall constitute a quorum.

(g) Compensation. — The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. (2008-107, s. 19A.2.)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this part effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 3.

Department of Health and Human Services.

Part 1. General Provisions.

§ 143B-138.1. Department of Health and Human Services — functions and organization.

Cross References. — For policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events, see G.S. 115D-20.1.

§ 143B-139.5B. Department of Health and Human Services — provision for joint training.

The Department of Health and Human Services shall offer joint training of Division of Health Service Regulation consultants, county DSS adult home specialists, and adult care home providers. The training shall be offered no fewer than two times per year, and subject matter of the training should be based on one or more of the 10 deficiencies cited most frequently in the State during the immediately preceding calendar year. The joint training shall be designed to reduce inconsistencies experienced by providers in the survey process, to increase objectivity by DHSR consultants and DSS specialists in conducting surveys, and to promote a higher degree of understanding between facility staff and DHSR consultants and DSS specialists in what is expected during the survey process. (2001-385, s. 1(c); 2007-182, s. 1; 2008-187, s. 25.)

Effect of Amendments. — Session Laws 2008-187, s. 25, effective August 7, 2008, substituted "DHSR" for "DFS" twice.

Part 5A. S.O.S. Program.

§ 143B-152.4. Eligible applicants; application for grants.

(a) Any of the following may apply for a grant:
- (1) A community- or neighborhood-based 501(c)(3) entity.
- (2) A community-based, public or private nonprofit, tax exempt organization.
- (3) A school system.
- (4) A local government agency.

(b) Applicants for grants shall submit to the Department an application that includes the following information:
- (1) Identification of one or more neighborhoods to be served by the local S.O.S. program, based on a needs assessment of existing conditions for school-aged children to be served. Data used in the needs assessment may include for each neighborhood to be served by a local program (i) dropout statistics, (ii) the number and percentage of school-aged children who participate in the federal subsidized lunch program, (iii) the number of suspensions and expulsions involving school-aged children, (iv) the number of children to be served, (v) the number and percentage of students with two working parents or one single parent to be served at a site, (vi) the incidence of juvenile crime in the neighborhood, and (vii) any other relevant or unique local demographic data.

  Local authorities shall provide this or related information on a timely basis to local 501(c)(3) entities submitting applications to establish local S.O.S. programs;
- (2) A three-year plan that addresses data used in the needs assessment and that includes proposed goals and anticipated outcomes of the local S.O.S. program. The plan shall be prepared after consultation with local after-school programs, schools, community organizations or groups which have as their purpose assisting or helping school-aged children who are at risk of failing in school or entering the juvenile justice system, or other appropriate groups. In addition, the three-year plan shall provide for regular collaborative efforts to seek input and advice from parents of the students being served and from other citizens who reflect the demographic conditions of the students being served;

(3) A statement of how grant funds would be used to address local problems and what other resources would be used to address the problems. This statement should include a list of services to be offered that are related to the goals and outcomes and should include plans for recruiting volunteers to assist in the program's activities; and

(4) A process for assessing on an annual basis the success of the local plan for addressing the goals of the local S.O.S. program. (1994, Ex. Sess., c. 24, s. 30(a); 2008-107, s. 16.2.)

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 16.2, effective July 1, 2008, rewrote subsection (a).

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission — creation, powers and duties.

Editor's Note. —

Session Laws 2008-107, s. 10.17(q), provides: "Social Services Block Grant funds appropriated to the North Carolina Inter-Agency Council for Coordinating Homeless Programs and the North Carolina Housing Coalition are exempt from the provisions of 10A NCAC 71R.0201(3)."

For prior similar provisions, see Session Laws 2007-323, s. 10.55(p).

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Part 10B. Early Childhood Initiatives.

§ 143B-168.10. Early childhood initiatives; findings.

Editor's Note. —

Session Laws 2007-323, s. 7.24(a)-(f), as amended by Session Laws 2008-107, s. 7.17(a) and (c), and as amended by Session Laws 2008-181, s. 49.1, provides: "(a) The Department of Public Instruction shall continue the implementation of the 'More at Four' prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

"(1) A process and system for identifying children at risk of academic failure.

"(2) A process and system for identifying children who are not being served in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs, and who are eligible to enter kindergarten the next school year, as well as children who are underserved.

"(3) A curriculum or several curricula that are research-based and/or built on sound instructional theory. These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.

"(4) An emphasis on ongoing family involvement with the prekindergarten program.

"(5) Evaluation of child progress through a statewide evaluation, as well as ongoing assessment of the children by teachers.

"(6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.

"(7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.

"(8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services and the Department of Public Instruction. The Department may use the child care rating system to assist in determining program participation.

"(9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.

"(10) A local contribution. Programs must demonstrate that they are accessing resources other than 'More at Four.'

"(11) A system of accountability to include a yearly review. The Department shall contract with an independent research organization to produce an annual report to include longitudinal review of the program and academic, behavioral, and other child-specific outcomes. The review shall also include a test of the feasibility of conducting a quasi experimental research design with a representative sample or samples of children who complete the More at Four program every year and children of comparable demographics and grade levels that do not participate in a More at Four program. The review shall be presented to the Joint Legislative Oversight Committee on Education by January 31 of every year."

"(12) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services and the Department of Public Instruction shall consider the reallocation of existing funds from State and local programs that provide prekindergarten-related care and services.

"(b) The Department of Public Instruction shall implement a plan to expand 'More at Four' program standards within existing resources to include four- and five-star-rated centers and schools serving four-year-olds and develop guidelines for these programs. The 'NC Prekindergarten Program Standards' initiative shall recognize four- and five-star-rated centers that choose to apply and meet equivalent 'More at Four' program standards as high quality pre-k classrooms. Classrooms meeting these standards shall have access to training and workshops for 'More at Four' programs. Whenever expansion slots are available, these classrooms shall have first priority to receive them.

"The 'More at Four' program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through January 31 of each year, at which time any remaining funds for slots unfilled shall be used to meet the needs of the waiting list for subsidized child care.

"(c) The Department of Public Instruction shall submit a report by February 1, 2008, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Education, the House of Representatives Appropriations Subcommittee on Education, and the Fiscal Research Division. This final report shall include the following:

"(1) The number of children participating in the program.

"(2) The number of children participating in the program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.

"(3) The expected expenditures for the programs and the source of the local match for each grantee.

"(4) The location of program sites and the corresponding number of children participating in the program at each site.

"(5) A comprehensive cost analysis of the program, including the cost per child served by the program.

"(6) The status of the NC Prekindergarten initiatives as outlined in this section.

"(d) For the 2007-2008 and the 2008-2009 fiscal years, the 'More at Four' program shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors. Furthermore, any age-eligible child of (i) an active duty member of the armed forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the armed forces, who is ordered to active duty by the proper authority within the last 18 months or expected to be ordered within the next 18 months, or (ii) a member of the armed forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the armed forces, who was injured or killed while serving on active duty, shall be eligible for the program.

"(e) The 'More at Four' program funding shall not supplant any funding for classrooms serving four-year-olds as of the 2005-2006 fiscal year. Support of existing four-year-old classrooms with 'More at Four' program funding shall be permitted when current funding is eliminated, reduced, or redirected as required to meet other specified federal or State educational mandates.

"(f) If a county is unable to increase 'More at Four' slots because of a documented lack of available resources necessary to provide the required local contribution for the additional slots allocated to the county for the 2007-2008 fiscal year or the 2008-2009 fiscal year, the contract agency for that county may appeal to the Office of School Readiness for an exception to the required local amount for those additional slots. The Office of School Readiness may grant an exception and allot funds to pay up to ninety percent (90%) of the full cost of the additional slots for that county if it finds that (i) there is in fact a documented lack of available resources in the county and (ii) granting the exception will not reduce access statewide to 'More at Four' slots."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143B-168.15. Use of State funds.

(a) State funds allocated to local projects for services to children and families shall be used to meet assessed needs, expand coverage, and improve the quality of these services. The local plan shall address the assessed needs of all children to the extent feasible. It is the intent of the General Assembly that the needs of both young children below poverty who remain in the home, as well as the needs of young children below poverty who require services beyond those offered in child care settings, be addressed. Therefore, as local partnerships address the assessed needs of all children, they should devote an appropriate amount of their State allocations, considering these needs and other available resources, to meet the needs of children below poverty and their families.

(b) Depending on local, regional, or statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the funds allocated to local partnerships for direct services, seventy percent (70%) of the funds spent in each year shall be used in child care related activities and early childhood education programs that improve access to child care and early childhood education services, develop new child care and early childhood education services, and improve the quality of child care and early childhood education services in all settings.

(c) Long-term plans for local projects that do not receive their full allocation in the first year, other than those selected in 1993, should consider how to meet the assessed needs of low-income children and families within their neighborhoods or communities. These plans also should reflect a process to meet these needs as additional allocations and other resources are received.

(d) State funds designated for start-up and related activities may be used for capital expenses or to support activities and services for children, families, and providers. State funds designated to support direct services for children, families, and providers shall not be used for major capital expenses unless the North Carolina Partnership approves this use of State funds based upon a finding that a local partnership has demonstrated that (i) this use is a clear priority need for the local plan, (ii) it is necessary to enable the local partnership to provide services and activities to underserved children and families, and (iii) the local partnership will not otherwise be able to meet this priority need by using State or federal funds available to that local partnership. The funds approved for capital projects in any two consecutive fiscal years may not exceed ten percent (10%) of the total funds for direct services allocated to a local partnership in those two consecutive fiscal years.

(e) State funds allocated to local partnerships shall not supplant current expenditures by counties on behalf of young children and their families, and maintenance of current efforts on behalf of these children and families shall be sustained. State funds shall not be applied without the Secretary's approval where State or federal funding sources, such as Head Start, are available or could be made available to that county.

(f) Repealed by Session Laws 2001-424, s. 21.75(g), effective July 1, 2001.

(g) Not less than thirty percent (30%) of the funds spent in each year of each local partnership's direct services allocation shall be used to expand child care subsidies. To the extent practicable, these funds shall be used to enhance the affordability, availability, and quality of child care services as described in this section. The North Carolina Partnership may increase this percentage requirement up to a maximum of fifty percent (50%) when, based upon a significant local waiting list for subsidized child care, the North Carolina Partnership determines a higher percentage is justified.

(h) State funds allocated to local partnerships that are unexpended at the end of a fiscal year shall remain available to the North Carolina Partnership for Children, Inc., to reallocate to local partnerships. (1993 (Reg. Sess., 1994), c. 766, s. 1; 1995, c. 509, s. 97; 1996, 2nd Ex. Sess., c. 18, s. 24.29(e); 1997-443, s. 11.55(n); 1997-506, s. 60; 1998-212, s. 12.37B(a), (b); 1999-237, s. 11.48(o); 2000-67, ss. 11.28(c), 11.28(d); 2001-424, s. 21.75(g); 2008-123, s. 2.)

Effect of Amendments. — Session Laws 2008-123, s. 2, effective July 1, 2008, added subsection (h).

Part 13A. Interagency Coordinating Council for Children with Disabilities from Birth to Five Years of Age.

§ 143B-179.5A: Repealed by Session Laws 2008-85, s. 1, effective July 11, 2008.

ARTICLE 6.

Department of Correction.

Part 1. General Provisions.

§ 143B-262.3. Reports to the General Assembly.

Editor's Note. —

Session Laws 2007-323, s. 17.16(a)-(c), as amended by Session Laws 2008-107, s. 17.4, provides: "(a) The Department of Correction shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on caseload averages for probation and parole officers. The report shall include:

"(1) Data on current caseload averages for Probation Parole Officer I, Probation Parole Officer II, Probation Parole Officer III and Chief Probation Parole Officer positions;

"(2) An analysis of the optimal caseloads for these officer classifications;

"(3) An assessment of the role of surveillance officers;

"(4) The number and role of paraprofessionals in supervising low-risk caseloads;

"(5) An update on the Department's implementation of the recommendations contained in the National Institute of Correction study conducted on the Division of Community Corrections in 2004;

"(6) The process of assigning offenders to an appropriate supervision level based on a risk assessment and an examination of other existing resources for assessment and case planning, including the Sentencing Services Program in the Office of Indigent Defense Services, and the range of screening and assessment services provided by the Division of Mental Health, Developmental Disability, and Substance Abuse Services in the Department of Health and Human Services; and

"(7) Any position reallocations in the previous 12 months, and the reasons for and fiscal impact of those reallocations.

"(b) The Department of Correction shall conduct a study of probation/parole officer workload at least biannually. The study shall include analysis of the type of offenders supervised, the distribution of the probation/parole officers' time by type of activity, the caseload carried by the officers, and comparisons to practices in other states. The study shall be used to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate, based on the nature of the offenders supervised and the time required to supervise those offenders.

"(c) The Department of Correction shall report the results of the study and recommendations for any adjustments to caseload goals to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by January 1, 2009.

"(d) The Office of State Personnel, in conjunction with the Department of Correction, shall conduct a compensation study of probation parole officers, including the identification and assessment of relevant labor market comparisons for which:

"(1) The job duties are similar;

"(2) The education and experience requirements are similar; and

"(3) The labor markets are representative of markets that typically seek to draw qualified applicants from similar backgrounds.

"The Office of State Personnel shall report the results of the study and recommendations for any adjustments to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by March 1, 2009."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Part 3. Parole Commission.

§ 143B-266. Post-Release Supervision and Parole Commission — creation, powers and duties.

(a) There is hereby created a Post-Release Supervision and Parole Commission of the Department of Correction with the authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any court of this State as provided in Chapter 148 of the General Statutes and laws of the State of North Carolina, except that persons sentenced under Article 81B of Chapter 15A of the General Statutes are not eligible for parole but may be conditionally released into the custody and control of United States Immigration and Customs Enforcement pursuant to G.S. 148-64.1. The Commission shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before the effective date of the Executive Organization Act of 1973) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency. The Commission shall also have authority to revoke and terminate persons on post-release supervision, as provided in Article 84A of Chapter 15A of the General Statutes.

(b) All releasing authority previously resting in the Commissioner and Commission of Correction with the exception of authority for extension of the limits of the place of confinement of a prisoner contained in G.S. 148-4 is hereby transferred to the Post-Release Supervision and Parole Commission. Specifically, such releasing authority includes work release (G.S. 148-33.1), indeterminate-sentence release (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the individual considered for work release or indeterminate-sentence release shall have been recommended for release by the Secretary of Correction or his designee. No recommendation for release is required for conditional release pursuant to G.S. 148-64.1.

(c) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, in accordance with which prisoners eligible for parole consideration may have their cases reviewed and investigated and by which such proceedings may be initiated and considered. All rules and regulations heretofore adopted by the Board of Paroles shall remain in full force and effect unless and until repealed or superseded by action of the Post-Release Supervision and Parole Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Correction.

(d) The Commission is authorized and empowered to impose as a condition of parole or post-release supervision that restitution or reparation be made by the prisoner in accordance with the provisions of G.S. 148-57.1. The Commission is further authorized and empowered to make restitution or reparation a condition of work release in accordance with the provisions of G.S. 148-33.2.

(e) The Commission may accept and review requests from persons placed on probation, parole, or post-release supervision to terminate a mandatory condition of satellite-based monitoring as provided by G.S. 14-208.43. The Commission may grant or deny those requests in compliance with G.S. 14-208.43. (1973, c. 1262, s. 8; 1975, c. 220; 1977, c. 614, s. 5; c. 732, s. 5; 1993, c. 538, s. 42; 1994, Ex. Sess., c. 21, s. 6; c. 24, s. 14(b); 2006-247, s. 15(i); 2007-213, s. 14; 2008-199, s. 2.)

Effect of Amendments. —

Session Laws 2008-199, s. 2, effective August 8, 2008, inserted "but may be conditionally released into the custody and control of United States Immigration and Customs Enforcement pursuant to G.S. 148-64.1" in subsection (a); and added the last sentence in subsection (b).

Article 6A.

North Carolina State-County Criminal Justice Partnership Act.

§ 143B-273.15. Funding formula.

(a) To determine the grant amount for which a county or counties may apply, the granting authority shall apply the following formula:

(1) Twenty-five percent (25%) based on a fixed equal dollar amount for each county;

(2) Fifty percent (50%) based on the county share of the State population; and

(3) Twenty-five percent (25%) based on the intermediate punishment entry rate for the county, using the total of the three most recent years of data available divided by the average county population for that same period.

The sum of the amounts in subdivisions (1), (2), and (3) is the total amount of the funding that a county may apply for under this subsection.

Grants to participating counties are for a period of one fiscal year with unobligated funds being returned to the Account at the end of the grant period.

Funds are provided to participating counties on a reimbursement basis unless a county documents a need for an advance of grant funds. The data used for this funding formula shall be updated at least once every three years.

(b) Each year that the Department of Correction updates the data for the funding formula pursuant to subsection (a) of this section, the Department of Correction shall send a written notification by January 15 to each program participating in the State-County Criminal Justice Partnership of the amount of the grant that the program will receive pursuant to the revised formula for the fiscal year beginning July 1 of that year subject to funds being appropriated by the General Assembly. (1993, c. 534, s. 1; 1995, c. 324, s. 19; 2001-424, s. 25.16(a); 2005-276, s. 17.23(g); 2008-107, s. 17.7(a).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 17.7(a), effective July 1, 2008, designated the introductory language as subsection (a); and added subsection (b).

§ 143B-273.15A. Reallocation of unspent or unclaimed funds.

Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership in an effort to maintain the level of services realized in previous fiscal years. A program may apply for a grant from the reallocated funds at least semiannually beginning July 1 of each year. (2008-107, s. 17.7(b).)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 7.

Department of Environment and Natural Resources.

Part 1. General Provisions.

§ 143B-279.1. Department of Environment and Natural Resources — creation.

Transfer of Prairie Ridge Land to Department of Environment and Natural Resources. — Session Laws 2008-107, s. 27.7C, provides: "The land currently allocated to the Department of Administration and used for the Prairie Ridge Ecostation for Wildlife and Learning is hereby reallocated to the Department of Environment and Natural Resources."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring

during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143B-279.12. One-stop permits for certain environmental permits.

(a) The Department of Environment and Natural Resources shall establish a one-stop environmental permit application assistance and tracking system program for all its regional offices. The Department shall provide to each person who submits an application for any environmental permit subject to this section to any regional office a time frame within which that applicant may expect a final decision regarding the issuance or denial of the permit. The Department shall identify the environmental permits that are subject to this section. The procedure regulating the time frame estimates and sanction for failing to honor the time frame shall be as set out in subsections (b) and (c) of this section.

(b) Upon receipt of a complete application for an environmental permit, the Department of Environment and Natural Resources shall provide to the applicant a good faith estimate of the date by which the Department expects to make the final decision of whether to issue or deny the permit.

(c) Unless otherwise provided by law, when an applicant has provided to the Department of Environment and Natural Resources the information and documentation required and requested by the Department and the Department fails to issue or deny the permit within 60 days of the date projected by the Department for the final decision of whether to issue or deny the permit, the permit shall be automatically granted to the applicant. This subsection does not apply when an applicant submits a substantial amendment to its application after the Department has provided the applicant the projected time frame as required by this section. This subsection does not apply when an applicant agrees to receive a final decision from the Department more than 60 days from the date projected by the Department under subsection (b) of this section.

(d) The Department of Environment and Natural Resources shall track the time required to process each complete environmental permit application that is subject to this section. The Department shall compare the time in which the permit was issued or denied with the projected time frame provided to the applicant by the Department as required by this section. The Department shall identify each permit that was issued or denied more than 90 days after receipt of a complete application by the Department and shall document the reasons for the delayed action.

(e) Repealed by Session Laws 2008-198, s. 10.1, effective August 8, 2008.

(f) The Department may adopt temporary rules to implement this section. (2004-124, s. 12.12(a); 2006-79, s. 14; 2008-198, s. 10.1.)

Effect of Amendments. —

Session Laws 2008-198, s. 10.1, effective August 8, 2008, deleted subsection (e) regarding the time frames for environmental permit issuance or denial.

§ 143B-279.13. Express permit and certification reviews.

(a) The Department of Environment and Natural Resources shall develop an express review program to provide express permit and certification reviews in all of its regional offices. Participation in the express review program is voluntary, and the program is to become supported by the fees determined pursuant to subsection (b) of this section. The Department of Environment and

Natural Resources shall determine the project applications to review under the express review program from those who request to participate in the program. The express review program may be applied to any one or all of the permits, approvals, or certifications in the following programs: the erosion and sedimentation control program, the coastal management program, and the water quality programs, including water quality certifications and stormwater management. The express review program shall focus on the following permits or certifications:

(1) Stormwater permits under Part 1 of Article 21 of Chapter 143 of the General Statutes.

(2) Stream origination certifications under Article 21 of Chapter 143 of the General Statutes.

(3) Water quality certification under Article 21 of Chapter 143 of the General Statutes.

(4) Erosion and sedimentation control permits under Article 4 of Chapter 113A of the General Statutes.

(5) Permits under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

(b) The Department of Environment and Natural Resources may determine the fees for express application review under the express review program. Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged under subsection (a) of this section for the express review of a project application requiring all of the permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed five thousand five hundred dollars ($5,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged for the express review of a project application requiring all of the permits under subdivisions (1) through (4) of subsection (a) of this section shall not exceed four thousand five hundred dollars ($4,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee charged for the express review of a project application for any other combination of permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed four thousand dollars ($4,000). Express review of a project application involving additional permits or certifications issued by the Department of Environment and Natural Resources other than those under subdivisions (1) through (5) of subsection (a) of this section may be allowed by the Department, and, notwithstanding G.S. 143-215.3D or any other statute or rule that sets a permit fee, the maximum permit application fee charged for the express review of a project application shall not exceed four thousand dollars ($4,000), plus one hundred fifty percent (150%) of the fee that would otherwise apply by statute or rule for that particular permit or certification. Additional fees, not to exceed fifty percent (50%) of the original permit application fee under this section, may be charged for subsequent reviews due to the insufficiency of the permit applications. The Department of Environment and Natural Resources may establish the procedure by which the amount of the fees under this subsection is determined, and the fees and procedures are not rules under G.S. 150B-2(8a) for the express review program under this section.

(c) Repealed by Session Laws 2008-198, s. 10.2, effective August 8, 2008. (2005-276, s. 12.2(a); 2008-198, s. 10.2.)

Effect of Amendments. — Session Laws 2008-198, s. 10.2, effective August 8, 2008, deleted subsection (c) regarding the requirement for the Department of Environment and Natural Resources to report findings to the Fiscal Research Division.

§ 143B-279.15. Report on One-Stop Permitting Program and Express Permitting Program.

No later than 1 March of each year, the Department of Environment and Natural Resources shall report to the Fiscal Research Division of the General Assembly and the Environmental Review Commission on the One-Stop for Certain Environmental Permits Program established by G.S. 143B-279.12 and the Express Permit and Certification Reviews Program established by G.S. 143B-279.13. The report shall include:

(1) The number of environmental permits subject to G.S. 143B-279.12 that took more than 90 days to issue or deny, the types of permits those were, the reasons for the extended processing time of those permits, and how the time within which the permit was actually issued or denied compared with the projected time frame provided to the applicant by the Department as provided by G.S. 143B-279.12. Based on the data gathered in this subdivision, the Department shall include recommendations regarding permit time frames for all major permits issued by the Department.

(2) Findings on the success of the Express Permit and Certification Reviews program established by G.S. 143B-279.13 and any other findings or recommendations, including any legislative proposals that it deems pertinent. (2008-198, s. 10.3.)

Editor's Note. — Session Laws 2008-198, s. 12, made this section effective August 8, 2008.

Part 4. Environmental Management Commission.

§ 143B-282. Environmental Management Commission — creation; powers and duties.

Editor's Note. — The section heading has been set out in the supplement to correct a publishing error in the main volume.

Part 7. Soil and Water Conservation Commission.

§ 143B-294. Soil and Water Conservation Commission — creation; powers and duties; compliance inspections.

Agricultural Drought Response Cost Share Program. — Session Laws 2008-107, s. 12.4, provides: "(a) Agricultural Drought Response Cost Share Program. — The Agricultural Drought Response Cost Share Program is established. The Program shall provide cost share funds to assist North Carolina farmers who suffered damage from the severe and extreme drought conditions in North Carolina in 2007. These cost share funds shall be used to assist farmers with the following projects:

"(1) To redrill damaged wells or to drill new wells to be used as a water supply for livestock or for irrigation.

"(2) To renovate damaged or inadequate farm ponds or construct new farm ponds to be used as a water supply for livestock or for irrigation.

"(3) To renovate pastures depleted by the 2007 drought.

"(b) Program Administration. — The Program shall be implemented and supervised by the Soil and Water Conservation Commission through the Agriculture Cost Share Program for Nonpoint Source Pollution Control. The Commission shall administer this Program as provided in this section and in Part 9 of Article 21 of Chapter 143 of the General Statutes.

"(c) Program Functions. — Under the Agricultural Drought Response Cost Share Program, the Division shall:

"(1) Within funds available for this Program, provide cost share funds subject to all of the following limitations and requirements:

"a. Except as provided in G.S. 143-215.74(b)(9), State funding shall be limited to:

"1. Seventy-five percent (75%) of the average cost for each project with the assisted person providing twenty-five percent (25%) of the project cost, which may include in-kind support of the project.

"2. A maximum of seventy-five thousand dollars ($75,000) per year to each applicant.

"b. Applicants shall be limited to farmers who have an adjusted gross income in each of the previous two years that is at or below two hundred fifty thousand dollars ($250,000), unless at least seventy-five percent (75%) of this adjusted gross income is derived directly from farming, ranching, or forestry operations.

"c. To be eligible for cost share funds under subdivision (1) or subdivision (2) of subsection (a) of this section, applicants must demonstrate that their existing water supplies are insufficient to provide reliable water to meet current needs for livestock watering or irrigation.

"d. Applicants may apply for cost share funds for projects under subsection (a) of this section that were installed as of August 1, 2007, so long as the costs of installation are documented to the satisfaction of the Commission.

"e. The requirements and limitations under subdivisions (1), (2), (5), and (8) of subsection (b) of G.S. 143-215.74 do not apply. All other limitations and requirements set out in Part 9 of Article 21 of Chapter 143 of the General Statutes, as modified by this section, apply.

"(2) Establish criteria to prioritize the redrilling of damaged wells and the drilling of new wells, the renovation of damaged or inadequate farm ponds and the construction of new farm ponds, and the renovation of pastures depleted by the drought.

"(3) Establish criteria for the selection of applicants who are eligible for participation in the Program.

"(4) Develop a process for soliciting and reviewing applications and for selecting farmers to participate in the Program.

"(5) Investigate and pursue other funding sources to supplement State funds, including federal, local, and private funding sources.

"(6) Provide technical assistance to participating persons to assist with the projects that are eligible for cost share funds under subsection (a) of this section and to facilitate the timely transfer of technology among participating persons.

"(d) Report. — No later than 31 January of each year, the Division shall prepare a comprehensive report on the implementation of subsections (a) through (c) of this section. The report shall be submitted to the Environmental Review Commission as a part of the report required by G.S. 143-215.74(e). The first report required by this subsection shall be submitted to the Environmental Review Commission no later than 31 January 2009.

"(e) Program Funds. — The Soil and Water Conservation Commission may use up to one hundred fifteen thousand dollars ($115,000) of the funds appropriated in this act to the Department of Environment and Natural Resources for the 2008-2009 fiscal year to be used for the Agricultural Drought Response Cost Share Program for the Division of Soil and Water Conservation and for the Soil and Water Conservation Districts for the costs of providing engineering assistance, providing technical assistance, and administering the Program. Further, twenty-five percent (25%) of the remaining funds shall not be allocated during the initial funding cycle, but shall be retained to be allocated by the Commission consistent with the limitations under this section, for the purposes under this section, and to address future drought emergencies or to allocate to farmers who received cost share funds under this section who need additional funds to achieve the purpose of the initial cost share disbursement."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 8.

Department of Transportation.

Part 1. General Provisions.

§ 143B-346. Department of Transportation — purpose and functions.

Editor's Note. — Session Laws 2008-121, s. 1, provides: "The Department of Transportation shall study issues relating to the vehicular transportation of individuals seated in wheelchairs. The study shall include reviewing appropriate methods of transporting passengers who remain seated in wheelchairs while in motor vehicles and developing guidelines for the installation and use of wheelchair tie-down systems. The Department shall report its findings and any recommendations to the North Carolina Study Commission on Aging and the Joint Legislative Transportation Oversight Committee not later than February 1, 2009."

Part 2. Board of Transportation.

§ 143B-350. Board of Transportation — organization; powers and duties, etc.

(a) Board of Transportation. — There is hereby created a Board of Transportation. The Board shall carry out its duties consistent with the needs of the State as a whole. The diversity and size of the State require that regional differences be considered by Board members as they develop transportation policy and projects for the benefit of the citizens of the State.

(b) Membership of the Board. —

(1) Number, appointment. — The Board of Transportation shall have 19 voting members. Fourteen of the members shall be division members appointed by the Governor. Five shall be at-large members appointed by the Governor. At least three members of the Board shall be registered voters of a political party other than the political party of the Governor. The Secretary of Transportation shall serve as an ex officio nonvoting member of the Board. No more than two members of the Board may reside in the same highway division.

(2) Division members. — One member shall be appointed from and be a resident of each of the 14 highway divisions. The Governor, in selecting division members, shall consider for appointment persons suggested by the Transportation Advisory Committees located within each division. Division members shall direct their primary effort to developing transportation policy and addressing transportation problems in the region they represent. Division members shall regularly consult with and consider the views of local government units and Transportation Advisory Committees in the region they represent.

(3) At-large members. — Five members shall be appointed by the Governor from the State at large. At-large members appointed pursuant to this subdivision shall develop transportation policy and address transportation problems with a statewide perspective. At-large members appointed under this subdivision shall possess the following qualifications:

a. One at-large member shall be a person with expertise in environmental issues affecting the State;

b. One at-large member shall be a person familiar with the State ports and aviation issues;

c. One at-large member shall be a person residing in a rural area of the State with broad knowledge of and experience in transportation issues affecting rural areas;

d. One at-large member shall be a person residing in an urban area with broad knowledge of and expertise in mass transit;

e. One at-large member shall be a person with broad knowledge of and expertise in government-related finance and accounting.

(c) Staggered Terms. — The terms of all Board members serving on the Board prior to January 15, 2001, shall expire on January 14, 2001. A new board of 19 members shall be appointed with terms beginning on January 15, 2001. The Board shall serve the following terms: division members representing divisions 1, 3, 5, 7, 9, 11, and 13 and the three at-large members filling the positions designated in sub-subdivisions (b)(3)a., b., and e. of this section shall serve four-year terms beginning on January 15, 2001, and four-year terms thereafter; and division members representing divisions 2, 4, 6, 8, 10, 12, and 14 and the two at-large members filling the positions designated in sub-subdivisions (b)(3)c. and d. of this section shall serve two-year terms beginning January 15, 2001, and four-year terms thereafter.

(d) Holdover Terms; Vacancies; Removal. — Members shall continue to serve until their successors are appointed. The Governor may appoint a member to serve out the unexpired term of any Board member. The Governor may remove any member of the Board for any cause the Governor finds sufficient. The Governor shall remove any member of the Board upon conviction of a felony, conviction of any offense involving a violation of the Board member's official duties, or for a violation of the provisions of subsections (i), (j), and (k) of this section or any other code of ethics applicable to members of the Board as determined by the Governor or the Governor's designee.

(e) Organization and Meetings of the Board. — Within 60 days after January 15, 2001, and thereafter within 60 days following the beginning of the regular term of the Governor, the Governor or his designee shall call the Board into session. The Board shall select a chair and vice-chair from among its membership for two-year terms. The Board may select a chair or vice-chair for one additional two-year term. The Board of Transportation shall meet once in each 60 days at such regular meeting times as the Board may by rule provide and at any place in the State as the Board may provide. The Board may hold special meetings at any time at the call of the chairman or any three members. The Board shall have the power to adopt and enforce rules and regulations for the government of its business and proceedings. The Board shall keep minutes of its meetings, which shall at all times be open to public inspection. The majority of the Board shall constitute a quorum for the transaction of business. Board members shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(f) Duties of the Board. — The Board of Transportation has the following duties and powers:

(1) To formulate policies and priorities for all modes of transportation under the Department of Transportation.

(2) To advise the Secretary on matters to achieve the maximum public benefit in the performance of the functions assigned to the Department.

(3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation taking into consideration the social, economic and environmental impacts of the various alternatives.

(4) To approve a schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the future. This schedule is designated the Transportation Improvement Program; it must be published and copies must be available for distribution. The document that contains the Transportation Improvement Program, or a separate document that is published at the same time as the Transportation Improvement Program, must include the anticipated funding sources for the improvement projects included in the Program, a list of any changes made from the previous year's Program, and the reasons for the changes.

(5) To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to it.

(6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the Department.

(7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be available.

(8) To approve all highway construction programs.

(9) To approve all highway construction projects and construction plans for the construction of projects.

(10) To review all statewide maintenance functions.

(11) To award all highway construction contracts.

(12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent domain.

(12a) To approve partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, with priority given to highways, roads, streets, and bridges.

(13) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

(f1) Local Government Participation. — The ability of a local government to pay in part or whole for any transportation improvement project shall not be a factor considered by the Board of Transportation in its development and approval of a schedule of major State highway system improvement projects to be undertaken by the Department under G.S. 143B-350(f)(4).

(f2) Approval of aircraft and ferry purposes. — Before approving the purchase of an aircraft from the Equipment Fund or a ferry in a Transportation Improvement Program, the Board of Transportation shall prepare an estimate of the operational costs and capital costs associated with the addition of the aircraft or ferry and shall report those additional costs to the General Assembly pursuant to G.S. 136-12(b), and to the Joint Legislative Commission on Governmental Operations.

(g) Delegation of Board Duties. — The Board of Transportation may, in its discretion, delegate to the Secretary of Transportation the authority:

(1) To approve all highway construction projects and construction plans for the construction of projects;

(2) To award all highway construction contracts;

(3) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

The Secretary may, in turn, subdelegate these duties and powers.

(h) Consultation of Board Members. — Each member of the Board of Transportation who is appointed to represent a transportation engineering division or who resides in a division shall be consulted before the Board makes a decision affecting that division.

(i) Disclosure of Contributions. — Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under

Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. — A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. — The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection shall include a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

(*l*) Additional Requirements for Disclosure Statements. — All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. — The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in nature, conducted in conjunction with the State Ethics Commission, and shall include input from the School of Government at the University of North Carolina at Chapel Hill, the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

(n) Review of Appointments by the Joint Legislative Transportation Oversight Committee. — The Governor shall submit the names of all proposed

Board of Transportation appointees, along with the disclosure statements required under subsections (i), (j), and (k) of this section, to the Joint Legislative Transportation Oversight Committee prior to Board members' taking office. The Committee shall have 30 days to review and submit comments to the Governor on the proposed appointees before they take office. The Governor shall consider the views expressed by the Committee concerning the appointees to the Board. If the Committee does not review or submit comments to the Governor on the proposed Board appointees within the 30 days, the Governor may proceed to appoint the proposed members to the Board. (1975, c. 716, s. 1; 1977, c. 464, s. 6; 1981 (Reg. Sess., 1982), c. 1191, ss. 9, 10; 1985, c. 479, s. 185; 1987, c. 738, s. 170(b), (c); c. 747, s. 4.1; 1989, c. 500, s. 53; c. 692, s. 1.10; 1993, c. 483, s. 4; 1995, c. 490, s. 60; 1997-443, s. 32.1; 1997-495, s. 88(a); 1998-169, ss. 1, 2; 2006-201, s. 15; 2006-230, s. 1(c); 2006-264, s. 29(n); 2007-439, s. 2; 2008-180, s. 1.)

Effect of Amendments. — Session Laws 2008-180, s. 1, effective August 4, 2008, substituted "Local Government" for "Municipal" and "local government" for "municipality" in subsection (f1).

ARTICLE 9.

Department of Administration.

Part 10. North Carolina Council for Women.

§ 143B-393. North Carolina Council for Women — creation; powers and duties.

Cross References. — As to Sexual Assault and Rape Crisis Center Fund, see G.S. 143B-394.21.

Part 10D. Sexual Assault and Rape Crisis Center Fund.

§ 143B-394.21. Sexual Assault and Rape Crisis Center Fund.

(a) The Sexual Assault and Rape Crisis Center Fund is established within the State Treasury. The fund shall be administered by the Department of Administration, North Carolina Council for Women, and shall be used to make grants to centers for victims of sexual assault or rape crisis and to the North Carolina Coalition Against Sexual Assault, Inc. This fund shall be administered in accordance with the provisions of the State Budget Act under Chapter 143C of the General Statutes. The Department of Administration shall make quarterly grants to each eligible sexual assault or rape crisis center and to the North Carolina Coalition Against Sexual Assault, Inc. To be eligible to receive funds under this section, a sexual assault or rape crisis center shall meet the following requirements:

(1) Have been in operation on the preceding July 1 and continue to be in operation.

(2) Offer all of the following services: a hotline, transportation services, community education programs, daytime services, and call forwarding during the night; and fulfill other criteria established by the Department of Administration.

(3) Be a nonprofit corporation or a local governmental entity.
(4) Have a mission statement that clearly specifies rape crisis services are provided.
(5) Act in support of victims of rape or sexual assault by providing assistance to ensure victims' interests are represented in law enforcement and legal proceedings and support and referral services are provided in medical and community settings.

(b) Funds appropriated from the General Fund to the Department of Administration, North Carolina Council for Women, for the Sexual Assault and Rape Crisis Center Fund shall be distributed in two shares. The North Carolina Coalition Against Sexual Assault, Inc., and sexual assault or rape crisis centers whose services are confined to rape crisis or sexual assault services shall receive an equal share of thirty-five percent (35%) of the funds. Organizations whose services contain sexual assault or rape crisis services and domestic violence services or other support services shall receive an equal share of the remaining sixty-five percent (65%) of the funds. (2008-107, s. 19.1.)

Editor's Note. — This Part was enacted as Part 3B of Article 11 of this Chapter, and this section was enacted as G.S. 143B-480.20, by Session Laws 2008-107, s. 19.1. This Part has been redesignated as Part 10D of Article 9 of this Chapter, and this section redesignated as G.S. 143B-394.21, at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 30.6, made this Part effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Part 25. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

§ 143B-426.24. (Effective until July 1, 2009) Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of State Treasurer. The Board shall create, establish, implement, coordinate and administer a Deferred Compensation Plan for employees of the State, any county or municipality, the North Carolina Community College System, and any political subdivision of the State. Until so established, the Board heretofore established pursuant to Executive Order XII dated November 12, 1974, shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established.

(b) The Board shall consist of seven voting members, as follows:
(1) Three persons shall be appointed by the Governor who shall have experience with taxation, finance and investments, one of whom shall be a State employee;
(2) One member shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives under G.S. 120-121;
(3) One member shall be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate under G.S. 120-121;
(4) The Secretary of Administration, ex officio; and
(5) The State Treasurer, ex officio, chairman.

G.S. 143B-426.24 is set out twice. See note.

(c) General Assembly appointments shall serve two year terms. A member shall continue to serve until his successor is duly appointed but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve more than three consecutive two year terms.

(d) In case of a vacancy on the Board before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (b). Vacancies in legislative appointments shall be filled under G.S. 120-122.

(e) Other than ex officio members, members appointed by the Governor shall serve at his pleasure.

(f) Any ex officio member may designate in writing, filed with the Board, any employee of his department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting.

(g) It shall be the duty of the Board when established to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Board to devise a uniform Deferred Compensation Plan for teachers and employees, which shall include a reasonable number of options to the teacher or employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of teachers and public employees generally.

(h1) Notwithstanding any other law, an employee of any county or municipality, an employee of the North Carolina Community College System, or an employee of any political subdivision of the State may participate in any 457 Plan adopted by the State, with the consent of the Board and with the consent of the proper governing authority of such county, municipality, community college, or political subdivision of the State where such employee is employed.

(i) The Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and marketing of the Plan to teachers and employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. All assets of the Plan, including all deferred amounts, property and rights purchased with deferred amounts, and all income attributed thereto shall be held in trust for the exclusive benefit of the Plan participants and their beneficiaries.

G.S. 143B-426.24 is set out twice. See note.

(k) Members of the Board, who are not officers or employees of the State, shall receive per diem and necessary travel and subsistence in accordance with the provisions of G.S. 138-5, funded as provided in subsection (m) hereof.

(*l*) All clerical and other services and personnel required by the Board shall be supplied by the Department of State Treasurer, funded as provided in subsection (m) hereof.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Board may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The State Treasurer is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would otherwise be required to be borne by teachers and employees who are then participating in the Plan.

(n) A majority of the Board shall constitute a quorum for the transaction of business.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein. (1983, c. 559, s. 1; 1991, c. 389, s. 2; 1995, c. 490, s. 40; 1999-456, s. 42; 2004-137, s. 1; 2006-66, s. 20.1.)

Section Set Out Twice. — The section above is effective until July 1, 2009. For the section as amended July 1, 2009, see the following section, also numbered G.S. 143B-426.24.

§ 143B-426.24. (Effective July 1, 2009) North Carolina Public Employee Deferred Compensation Plan.

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of State Treasurer. The Board shall create, establish, implement, coordinate and administer a Deferred Compensation Plan for employees of the State, any county or municipality, the North Carolina Community College System, and any political subdivision of the State. Until so established, the Board heretofore established pursuant to Executive Order XII dated November 12, 1974, shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established. Effective July 1, 2008, the Plan shall be administered by the Supplemental Retirement Board of Trustees established under G.S. 135-96.

(b)-(f) Repealed by Session Laws 2008-132, s. 3, effective July 1, 2009.

(g) It shall be the duty of the Supplemental Retirement Board to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Supplemental Retirement Board to devise a uniform Deferred Compensation Plan for teachers and employees, which shall include a reasonable number of options to the teacher or employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure

G.S. 143B-426.24 is set out twice. See notes.

the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of teachers and public employees generally.

(h1) Notwithstanding any other law, an employee of any county or municipality, an employee of the North Carolina Community College System, or an employee of any political subdivision of the State may participate in any 457 Plan adopted by the State, with the consent of the Supplemental Retirement Board and with the consent of the proper governing authority of such county, municipality, community college, or political subdivision of the State where such employee is employed.

(i) The Supplemental Retirement Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and marketing of the Plan to teachers and employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Supplemental Retirement Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. All assets of the Plan, including all deferred amounts, property and rights purchased with deferred amounts, and all income attributed thereto shall be held in trust for the exclusive benefit of the Plan participants and their beneficiaries.

(k), (*l*) Repealed by Session Laws 2008-132, s. 3, effective July 1 2009.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Supplemental Retirement Board may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The State Treasurer is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would otherwise be required to be borne by teachers and employees who are then participating in the Plan.

(n) Repealed by Session Laws 2008-132, s. 3, effective July 1 2009.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein. (1983, c. 559, s. 1; 1991, c. 389, s. 2; 1995, c. 490, s. 40; 1999-456, s. 42; 2004-137, s. 1; 2006-66, s. 20.1; 2008-132, s. 3.)

Section Set Out Twice. — The section above is effective July 1, 2009. For the section as in effect until July 1, 2009, see the preceding section, also numbered G.S. 143B-426.24.

Editor's Note. — Session Laws 2008-132, s. 4, provides: "Notwithstanding the provisions of G.S. 135-91, G.S. 143B-426.24, or any other provision of law, effective from July 1, 2008, through June 30, 2009, the North Carolina 401(k) Plan and the North Carolina Public Employee Deferred Compensation Plan shall be administered by a transitional Board of Trustees. The transitional Board of Trustees shall consist of nine members, as follows:

"(1) The two members of the Board of Trustees of the North Carolina 401(k) Plan who serve by virtue of their appointment to the Board of Trustees of the Teachers' and State Employees' Retirement System by the General Assembly pursuant to G.S. 135-6(b)(4);

"(2) The two members of the Board of Trustees of the North Carolina Deferred Compensation Plan appointed by the General Assembly pursuant to G.S. 143B-426.24(2) and (3);

"(3) Two of the members of the Board of Trustees of the North Carolina 401(k) Plan who serve by virtue of their appointment to the Board of Trustees of the Teachers' and State Employees' Retirement System by the Governor pursuant to G.S. 135-6(b)(3), to be determined by the Governor;

"(4) Two of the members of the Board of Trustees of the North Carolina Deferred Compensation Plan appointed by the Governor pursuant to G.S. 143B-426.24(1), to be determined by the Governor;

"(5) The State Treasurer, ex officio, who shall serve as Chair."

Effect of Amendments. — Session Laws 2008-132, s. 3, effective July 1, 2009, rewrote the section heading; in subsection (a), added the last sentence; deleted subsections (b) through (f), (k), (l), and (n), relating to membership, terms, vacancies, ex officio members, per diems, clerical services and personnel provision and quorum; inserted "Supplemental Retirement" before "Board" throughout the section; and made minor stylistic changes.

Part 28. Office of the State Controller.

§ 143B-426.39. Powers and duties of the State Controller.

BEACON Data Integration. — Session Laws 2008-107, s. 6.16(a)-(e), as amended by Session Laws 2008-118, s. 2.3, provides: "(a) The Office of the State Controller, in cooperation with the State Chief Information Officer, shall begin implementation of the Beacon Strategic Plan for Data Integration, issued in April 2008. This plan shall be implemented under the governance of the BEACON Project Steering Committee and in conjunction with leadership in appropriate State agencies and with the support and cooperation of the Office of State Budget and Management.

"While it is the intent that this initiative provide broad access to information across State government, the plan shall comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal and State law shall be limited to appropriate and authorized persons.

"(b) The State Controller shall serve as the Chairman of the BEACON Project Steering Committee. The other members of the committee shall be the State Chief Information Officer, the State Treasurer, the Attorney General, the Secretary of Correction, the Administrative Officer of the Courts, the State Budget Officer, the Secretary of Administration, and the Chief Financial Officer of the Department of Transportation.

"(c) Of the funds appropriated from the General Fund to the North Carolina Information Technology Fund, the sum of five million dollars ($5,000,000) for the 2008-2009 fiscal year shall be used for BEACON data integration as provided by subsection (a) of this section. Funds to support this activity shall also be the unexpended balance from the funds appropriated for BEACON/Data Integration Funds in Section 5.3(b) of S.L. 2007-323. The Office of the State Controller, with the support of the Office of State Budget and Management, shall identify and make all efforts to secure any matching funds or other resources to assist in funding this initiative.

"(d) Funds authorized in this section may be used for the following purposes:

"(1) To support the cost of a project manager to conduct the activities outlined herein reportable to the Office of the State Controller.

"(2) To support two business analysts to provide support to the program manager and agencies in identifying requirements under this program.

"(3) To establish a Business Intelligence Competency Center (BICC), a collaborative organization comprised of both technical and business stakeholders, to support and manage the business need for analytics through the development of standards and best practices.

"(4) To engage a vendor to implement the Strategic Implementation Plan as required herein.

"(5) To conduct integration activities as approved by the BEACON Project Steering Committee. The State Chief Information Officer shall use current enterprise licensing to implement these integration activities.

"(e) Prior to the convening of the 2009 General Assembly, the Office of the State Controller shall provide semiannual reports to the Joint Legislative Oversight Committee for Information Technology. Written reports shall be submitted not later than October 1, 2008, and April 1, 2009, with presentations of the reports at the first session of the Joint Legislative Oversight Committee on Information Technology following the written report submission date. The Joint Legislative Oversight Committee on Information Technology shall then report to the Joint Legislative Commission on Governmental Operations." For prior similar provisions, see Session Laws 2007-323, s. 6.8.

Editor's Note. — Session Laws 2008-107, s. 1. 2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5, is a severability clause.

ARTICLE 10.

Department of Commerce.

Part 2. Economic Development.

§ 143B-437.08. Development tier designation.

(a) Tiers Defined. — A development tier one area is a county whose annual ranking is one of the 40 highest in the State. A development tier two area is a county whose annual ranking is one of the next 40 highest in the State. A development tier three area is a county that is not in a lower-numbered development tier.

(b) Development Factor. — Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.

(2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.

(4) The county's rank in a ranking of counties by adjusted assessed property value per capita as published by the Department of Public Instruction, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. — After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. — In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Adjustment for Certain Small Counties. — Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties, and any county that has a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census shall automatically be ranked one of the 40 highest counties.

(f) Adjustment for Development Tier One Areas. — Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. — An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.

(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(h) Exception for Certain Multijurisdictional Industrial Parks. — An eligible industrial park created by interlocal agreement under G.S. 158-7.4, and parcels of land located within the industrial park that are subsequently transferred and used for industrial or commercial purposes authorized for cities and counties under G.S. 158-7.1, have the lowest development tier designation of the designations of the counties in which they are located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in three or more contiguous counties.

(2) At least one of the counties in which the industrial park is located is a development tier one area.

(3) The industrial park is owned by three or more units of local government or a nonprofit corporation owned or controlled by three or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 250 developable acres. A transfer of acreage that reduces the number of developable acres below 250 developable acres in a county does not affect an industrial park's eligibility under this subsection if the transfer is to an owner who uses or develops the acreage for industrial or commercial purposes authorized for cities and counties under G.S. 158-7.1. For the purposes of this subdivision, "developable acres" includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates. (2006-252, s. 1.2; 2008-147, s. 1.)

Editor's Note. —

Session Laws 2008-136, s. 5, effective July 1, 2009, and expiring October 1, 2023, provides: "A county designated as a development tier one or two area pursuant to G.S. 143B-437.08 may, upon resolution by the Board of Commissioners of their intent to (i) develop a plan for the management of abandoned manufactured homes and (ii) implement the plan once developed, request a planning grant of up to two thousand five hundred dollars ($2,500) from the Solid Waste Management Trust Fund. These funds shall be used by the county to prepare a plan as provided in G.S. 130A-309.99C, as enacted by Section 1 of this act [codified as G.S. 130A-309.99A through 130A-309.99H], and to identify abandoned manufactured homes."

Effect of Amendments. — Session Laws 2008-147, s. 1, effective August 2, 2008, in subsection (h), in the introductory paragraph, substituted "G.S. 158-7.4, and parcels of land located within the industrial park that are subsequently transferred and used for industrial or commercial purposes authorized for cities and counties under G.S. 158-7.1, have the lowest development tier designation of the designations of the counties in which they are" for "G.S. 158-7.4 has the lowest development tier designation of the designations of the counties in which it is," and in subdivision (h)(4), inserted the second sentence.

§ 143B-437.11: Recodified as G.S. 143B-437.012 by Session Laws 2008-187, s. 26(a), effective August 7, 2008.

Editor's Note. —
Former G.S. 143B-437.11 was recodified as G.S. 143B-437.012 by Session Laws 2008-187, s. 26(a), effective August 7, 2008.

§ 143B-437.012. Job Maintenance and Capital Development Fund.

(a) Findings. — The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity, to maintain high-paying jobs for the citizens of the State, and to encourage capital investment by encouraging and promoting the maintenance of existing business and industry within the State.

(2) The economic condition of the State is not static, and recent changes in the State's economic condition have created economic distress that requires the enactment of a new program as provided in this section that is designed to encourage the retention of significant numbers of high-paying jobs and the addition of further large-scale capital investment.

(3) The enactment of this section is necessary to stimulate the economy and maintain high-quality jobs in North Carolina, and this section will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the maintenance of high-quality jobs, an enlargement of the overall tax base, continued diversity in the State's industrial base, and an increase in revenue to the State's political subdivisions.

(4) The purpose of this section is to stimulate economic activity and to maintain high-paying jobs within the State while increasing the property tax base for local governments.

(5) The benefits that flow to the State from job maintenance and capital investment are many and include increased tax revenues related to the capital investment, increased corporate income and franchise taxes due to the placement of additional resources in the State, a better trained, highly skilled workforce, and the continued receipt of personal income tax withholdings from workers who remain employed in high-paying jobs.

(b) Fund. — The Job Maintenance and Capital Development Fund is created as a restricted reserve in the Department of Commerce. Monies in the Fund do not revert but remain available to the Department for these purposes. The Department may use monies in the Fund only to encourage businesses to maintain high-paying jobs and make further capital investments in the State as provided in this section, and funds are hereby appropriated for these purposes in accordance with G.S. 143C-1-2.

(c) Definitions. — The definitions in G.S. 143B-437.51 apply in this section. In addition, as used in this section, the term "Department" means the Department of Commerce.

(d) Eligibility. — A business that satisfies all of the following conditions is eligible for consideration for a grant under this section:

(1) The Department certifies that the business has invested or intends to invest at least two hundred million dollars ($200,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a six-year period beginning with the time the investment commences.

(2) The business employs at least 2,000 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 2,000 full-time employees or equivalent full-time contract employees at the project for the full term of the grant agreement.

(3) The project is located in a development tier one area at the time the business applies for a grant.

(4) All newly hired employees of the business must be citizens of the United States, or have proper identification and documentation of their authorization to reside and work in the United States.

(e) Wage Standard. — A business is eligible for consideration for a grant under this section only if the business satisfies a wage standard at the project that is the subject of the agreement. A business satisfies the wage standard if it pays an average weekly wage that is at least equal to one hundred forty percent (140%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county. In making the wage calculation, the business shall include any jobs that were filled for at least 1,600 hours during the calendar year, regardless of whether the jobs are full-time positions or equivalent full-time contract positions. Each year that a grant agreement is in effect, the business shall provide the Department a certification that the business continues to satisfy the wage standard. If a business fails to satisfy the wage standard for a year, the business is not eligible for a grant payment for that year.

(f) Health Insurance. — A business is eligible for consideration for a grant under this section only if the business makes available health insurance for all of the full-time employees and equivalent full-time contract employees of the project with respect to which the application is made. For the purposes of this subsection, a business makes available health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage under G.S. 58-50-125.

Each year that a grant agreement under this section is in effect, the business shall provide the Department a certification that the business continues to make available health insurance for all full-time employees of the project governed by the agreement. If a business fails to satisfy the requirements of this subsection, the business is not eligible for a grant payment for that year.

(g) Safety and Health Programs. — A business is eligible for consideration for a grant under this section only if the business has no citations under the Occupational Safety and Health Act that have become a final order within the last three years for willful serious violations or for failing to abate serious violations with respect to the location for which the grant is made. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127.

(h) Environmental Impact. — A business is eligible for consideration for a grant under this section only if the business has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last three years with respect to the location for which the grant is made. For the purposes of this subsection, a significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d).

(i) Selection. — The Department shall administer the selection of projects to receive grants under this section. The selection process shall include the following components:

(1) Criteria. — The Department shall develop criteria to be used to identify and evaluate eligible projects for possible grants under this section.

(2) Initial evaluation. — The Department shall evaluate projects to determine if a grant under this section is merited and to determine whether the project is eligible and appropriate for consideration for a grant under this section.

(3) Application. — The Department shall require a business to submit an application in order for a project to be considered for a grant under this section. The Department shall prescribe the form of the application, the application process, and the information to be provided, including all information necessary to evaluate the project in accordance with the applicable criteria.

(4) Committee. — The Department shall submit to the Economic Investment Committee the applications for projects the Department considers eligible and appropriate for a grant under this section. The Committee shall evaluate applications to choose projects to receive a grant under this section. In evaluating each application, the Committee shall consider all criteria adopted by the Department under this section and, to the extent applicable, the factors set out in Section 2.1(b) of S.L. 2002-172.

(5) Findings. — The Committee shall make all of the following findings before recommending a project receive a grant under this section:
   a. The conditions for eligibility have been met.
   b. A grant under this section for the project is necessary to carry out the public purposes provided in subsection (a) of this section.
   c. The project is consistent with the economic development goals of the State and of the area where it is located.
   d. The affected local governments have participated in retention efforts and offered incentives in a manner appropriate to the project.
   e. A grant under this section is necessary for the sustainability and maintenance of the project in this State.

(6) Recommendations. — If the Committee recommends a project for a grant under this section, it shall recommend the amount of State funds to be committed, the preferred form and details of the State participation, and the performance criteria and safeguards to be required in order to protect the State's investment.

(j) Agreement. — Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for a grant under this section, the Department shall enter into an agreement to provide a grant or grants for a project recommended by the Committee. Each grant agreement is binding and constitutes a continuing contractual obligation of the State and the business. The grant agreement shall include the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department. Each grant agreement shall contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Each grant agreement shall contain a provision requiring the business to maintain the employment level at the project that is the subject of the agreement that is the lesser of the level it had at the time it applied for a grant under this section or that it had at the time that the investment required under subsection (d) of this section began. For the purposes of this subsection, the employment level includes full-time employees and equivalent full-time contract employees. The agreement shall further specify that the amount of a grant shall be reduced in proportion to the extent the business fails to maintain employment at this level and that the business shall not be eligible for a grant in any year in which its employment level is less than eighty percent (80%) of that required. A grant agreement may obligate the State to make a series of grant payments over a period of up to 10 years. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Attorney General's office in preparing the documentation for the grant agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section shall be signed personally by the Attorney General.

(k) Safeguards. — To ensure that public funds are used only to carry out the public purposes provided in this section, the Department shall require that each business that receives a grant under this section shall agree to meet performance criteria to protect the State's investment and ensure that the projected benefits of the project are secured. The performance criteria to be required shall include maintenance of an appropriate level of employment at specified levels of compensation, maintenance of health insurance for all full-time employees, investment of a specified amount over the term of the agreement, and any other criteria the Department considers appropriate. The agreement shall require the business to repay or reimburse an appropriate portion of the grant based on the extent of any failure by the business to meet the performance criteria. The agreement shall require the business to repay all amounts received under the agreement and to forfeit any future grant payments if the business fails to satisfy the investment eligibility requirement of subdivision (d)(1) of this section. The use of contract employees shall not be used to reduce compensation at the project that is the subject of the agreement.

(*l*) Calculation of Grant Amounts. — The Committee shall consider the following factors in determining the amount of a grant that would be appropriate, but is not necessarily limited to these factors:

(1) Ninety-five percent (95%) of the privilege and sales and use taxes paid by the business on machinery and equipment installed at the project that is the subject of the agreement.

(2) Ninety-five percent (95%) of the sales and use taxes paid by the business on building materials used to construct, renovate, or repair facilities at the project that is the subject of the agreement.

(3) Ninety-five percent (95%) of the additional income and franchise taxes that are not offset by tax credits. For the purposes of this subdivision, "additional income and franchise taxes" are the additional taxes that would be due because of the investment in machinery and equipment and real property at the project that is the subject of the agreement during the investment period specified in subsection (d) of this section.

(4) Ninety-five percent (95%) of the sales and use taxes paid on electricity, the excise tax paid on piped natural gas, and the privilege tax paid on other fuel for electricity, piped natural gas, and other fuel consumed at the project that is the subject of the agreement.

(5) One hundred percent (100%) of worker training expenses, including wages paid for on-the-job training, associated with the project that is the subject of the agreement.

(6) One hundred percent (100%) of any State permitting fees associated with the capital expansion at the project that is the subject of the agreement.

(m) Monitoring and Reports. — The Department is responsible for monitoring compliance with the performance criteria under each grant agreement and for administering the repayment in case of default. The Department shall pay for the cost of this monitoring from funds appropriated to it for that purpose or for other economic development purposes.

Within two months after the end of each calendar quarter, the Department shall report to the Joint Legislative Commission on Governmental Operations regarding the Job Maintenance and Capital Development Fund. This report shall include a listing of each grant awarded and each agreement entered into under this section during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be paid under the agreement during the current fiscal year. The report shall also include detailed information about any defaults and repayment during the preceding quarter. The Department shall publish this report on its Web site and shall make printed copies available upon request.

(n) Limitations. — The Department may enter into no more than five agreements under this section. The total aggregate cost of all agreements entered into under this section may not exceed sixty million dollars ($60,000,000). The total annual cost of an agreement entered into under this section may not exceed four million dollars ($4,000,000). (2007-552, 1st Ex. Sess., s. 1; 2008-187, s. 26(a).)

Editor's Note. — This section was formerly G.S. 143B-437.11, as enacted by Session Laws 2007-552, 1st Ex. Sess., s. 1. It was recodified as this section by Session Laws 2008-187, s. 26(a), effective August 7, 2008.

Part 2D. North Carolina Rural Redevelopment Authority.

§§ 143B-437.20 through 143-437.23: Repealed by Session Laws 2008-134, s. 73(a).

Editor's Note. — Session Laws 2005-364, s. 4, provides: "Any costs associated with the change of the name of the Global TransPark Development Zone to North Carolina's Eastern Region by this act shall be borne by North Carolina's Eastern Region Development Commission."

§§ 143B-437.26 through 143-437.33: Repealed by Session Laws 2008-134, s. 73(a).

Part 2F. e-NC Initiative.

(This part has a delayed repeal date. See notes.)

§ 143B-437.45. (This part has a delayed repeal date. See notes.) Definitions.

The following definitions apply in this Part:

(1) Authority. — The e-NC Authority.

(2) Commission. — The governing body of the Authority.

(3) Distressed urban areas. — Areas where at least one of the following requirements is met: (i) more than ten percent (10%) of children enrolled in public schools meet the requirements for the Food Stamp Program of the United States Department of Agriculture, (ii) ten percent (10%) of the citizens meet the TANF guidelines of the United States Department of Health and Human Services, or (iii) twenty-five percent (25%) of the children in the public school district meet the requirements for a federal government-sponsored free lunch.

(4) High-speed broadband Internet access. — Internet access with transmission speeds that are consistent with requirements for high-speed broadband Internet access as defined by the Federal Communications Commission from time to time.

(5) Regional partnership. — Any of the following:
  a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.
  b. The North Carolina's Northeast Commission created in G.S. 158-8.2.
  c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.
  d. The North Carolina's Eastern Region Development Commission created in G.S. 158-35.
  e. The Charlotte Regional Partnership, Inc.
  f. The Research Triangle Regional Partnership.
  g. The Piedmont Triad Partnership.

(6) Rural county. — A county with a density of fewer than 250 people per square mile based on the 2000 United States decennial census. (2000-148, s. 1; 2003-425, s. 1; 2005-364, s. 2; 2007-93, s. 2.; 2008-134, s. 73(e).)

Effect of Amendments. — Session Laws 2008-134, s. 73(e), effective July 28, 2008, rewrote subsection (5).

Part 2G. Job Development Investment Grant Program.

§ 143B-437.52. Job Development Investment Grant Program.

Editor's Note. —

Session Laws 2008-147, s. 2, provides: "Notwithstanding G.S. 143B-437.52(c), the maximum amount of total annual liability for grants for agreements entered into in calendar year 2008 under the Job Development Investment Grant Program, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed twenty-five million dollars ($25,000,000)."

§ 143B-437.61. Transfer to Industrial Development Fund.

Editor's Note. —

Session Laws 2008-147, s. 2, provides: "Notwithstanding G.S. 143B-437.52(c), the maximum amount of total annual liability for grants for agreements entered into in calendar year 2008 under the Job Development Investment Grant Program, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed twenty-five million dollars ($25,000,000)."

Part 2K. North Carolina Certified Retirement Community Program.

(Effective July 1, 2010)

§ 143B-437.100. (Effective July 1, 2010) North Carolina Certified Retirement Community Program — creation; powers and duties.

(a) Program. — There is established the North Carolina Certified Retirement Community Program as part of the 21st Century Communities program of the North Carolina Department of Commerce. The Department shall coordinate the development and planning of the North Carolina Certified Retirement Community Program with other State and local groups interested in participating in and promoting the North Carolina Certified Retirement Community Program. The Department shall adopt administrative rules to implement the provisions of this Part. For purposes of this Part, "Department" means the North Carolina Department of Commerce, and "Program" means the North Carolina Certified Retirement Community Program.

(b) Purpose. — The purpose of the Program is to encourage retirees and those planning to retire to make their homes in North Carolina. In order to further this purpose, the Department shall engage in the following activities:

(1) Promote the State as a retirement destination to retirees and those persons and families who are planning retirement both in and outside of North Carolina.
(2) Assist North Carolina communities in their efforts to market themselves as retirement locations and to develop communities that retirees would find attractive for a retirement lifestyle.
(3) Assist in the development of retirement communities and continuing care facilities under Article 64 of Chapter 58 of the General Statutes in order to promote economic development and a potential workforce to enrich North Carolina communities.
(4) Encourage mature market travel and tourism to North Carolina to evaluate future retirement desirability and to visit those who have chosen to retire in North Carolina.

(c) Factors. — The Department shall identify factors that are of interest to retirees or potential retirees in order to inform them of the benefits of living in North Carolina. These factors shall be used to develop a scoring system to determine whether an applicant will qualify as a North Carolina certified retirement community and may include the following:

(1) North Carolina's State and local tax structure.
(2) Housing opportunities and cost.
(3) Climate.
(4) Personal safety.
(5) Working opportunities.
(6) Health care and continuing care services.

(7) Transportation.
(8) Continuing education.
(9) Leisure living.
(10) Recreation.
(11) The performing arts.
(12) Festivals and events.
(13) Sports.
(14) Other services and facilities necessary to enable persons to age in the community with a minimum of restrictions.

(d) Certification. — The Department shall establish criteria for qualifying as a North Carolina certified retirement community. To be eligible to obtain certification as a North Carolina certified retirement community, the community shall meet each of the following requirements:

(1) Be located within 30 miles of a hospital and of emergency medical services.
(2) Take steps to gain the support of churches, clubs, businesses, media, and other entities whose participation will increase the Program's success in attracting retirees or potential retirees.
(3) Establish a retiree attraction committee. The retiree attraction committee shall fulfill or create subcommittees to fulfill each of the following:
    a. Conduct a retiree desirability assessment analyzing the community with respect to each of the factors identified by the Department and submit a report of the analysis to the Department.
    b. Send a representative of the retirement attraction committee to attend State training meetings conducted by the 21st Century Communities program during the certification process.
    c. Raise funds necessary to run the Program, organize special events, and promote and coordinate the Program with local entities.
    d. Establish a community image, evaluate target markets, and develop a marketing and public relations plan designed to accomplish the purpose of the Program.
    e. Develop a system that identifies and makes contact with existing and prospective retirees, that provides tour guides when prospects visit the community, and that responds to inquiries, logs contacts made, invites prospects to special community events, and maintains continual contact with prospects until the prospect makes a retirement location decision.
(4) Remit an application fee to the 21st Century Communities program equal to the greater of ten thousand dollars ($10,000) or the product of fifty cents (50ó) multiplied by the population of the community, as determined by the most recent census.
(5) Submit the completed marketing and public relations plan designed to accomplish the purpose of the Program to the Department.
(6) Submit a long-term plan outlining the steps the community will undertake to maintain or improve its desirability as a destination for retirees, including corrections to any services or facilities identified in the retiree desirability assessment. (2008-188, s. 1.)

Editor's Note. — Session Laws 2008-188, s. 3, makes this part effective July 1, 2010.

"Session Laws 2008-188, s. 2, provides: "Pilot program — The Department of Commerce, in conjunction with the Second Career Center of Robeson Community College, shall lead the implementation of the North Carolina Certified Retirement Community Program through a pilot project. During this pilot implementation, the community selection criteria and scoring methodology will be defined, applications will be developed, educational sessions will be conducted, and marketing strategies will be developed. The City of Lumberton will serve as the pilot community for this program. In recognition of the assistance, the City of Lumberton shall provide in this pilot implementation, application fee charged for the City's initial application shall be twenty-five dollars ($25.00). The Department of Commerce, the Second Career Center, and the City of Lumberton shall jointly work to organize the community and prepare its application. The Department of Commerce shall report on the implementation of this section by April 1, 2009, to the Joint Legislative Commission on Governmental Operations and to the House and Senate Appropriations Subcommittees on Natural and Economic Resources."

§ 143B-437.101. (Effective July 1, 2010) North Carolina Certified Retirement Community Program — administration.

(a) Administration and Support. — Upon being certified as a North Carolina certified retirement community, the 21st Century Communities program shall provide the following assistance to the community:

(1) Assistance in the training of local Program staff and volunteers.

(2) Ongoing oversight and guidance in marketing and updating on national retirement trends.

(3) Inclusion in the State's national advertising and public relations campaigns and travel show promotions, including a prominent feature on the Department's Web site.

(4) Eligibility for State financial assistance for brochures, support material, and advertising.

(5) An annual evaluation and progress assessment on maintaining and improving the community's desirability as a home for retirees.

(b) Expiration. — A community's certification under this section expires on the fifth anniversary of the date the initial certification is issued. To be considered for recertification by the 21st Century Communities program, an applicant community shall submit the following:

(1) A completed new application in accordance with the requirements of this Part.

(2) Data demonstrating the success or failure of the community's efforts to market and promote itself as a desirable location for retirees and potential retirees.

(3) The fee required by G.S. 143B-437.100(d)(4). (2008-188, s. 1.)

Article 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

§ 143B-475. Department of Crime Control and Public Safety — functions.

Editor's Note. —

Session Laws 2008-142, s. 2 provides: "The Department of Crime Control and Public Safety shall study whether the Secretary should be authorized to reimburse the family for funeral expenses of a State law enforcement officer who is killed in the line of duty. The study shall include a determination on the maximum amount to be paid, and whether additional funds beyond those available to the Department should be appropriated for the expenses. The Department shall report the results of its study, with any recommendations for legislation, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by January 1, 2009."

§ 143B-476. Department of Crime Control and Public Safety — head; powers and duties as to emergencies and disasters; other powers and duties.

(a) The head of the Department of Crime Control and Public Safety is the Secretary of Crime Control and Public Safety, who shall be known as the Secretary. The Secretary shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State. These powers and duties include:

(1) Accepting gifts, bequests, devises, grants, matching funds and other considerations from private or governmental sources for use in promoting the work of the Governor's Crime Commission;

(2) Making grants for use in pursuing the objectives of the Governor's Crime Commission;

(3) Adopting rules as may be required by the federal government for federal grants-in-aid for criminal justice purposes and to implement and carry out the regulatory and enforcement duties assigned to the Department of Crime Control and Public Safety as provided by the various commercial vehicle, oversize/overweight, motor carrier safety, motor fuel, and mobile and manufactured home statutes.

(4) Ascertaining the State's duties concerning grants to the State by the Law Enforcement Assistance Administration of the United States Department of Justice, and developing and administering a plan to ensure that the State fulfills its duties; and

(5) Administering the Assistance Program for Victims of Rape and Sex Offenses.

(b) The Secretary, through appropriate subunits of the department, shall, at the request of the Governor, provide assistance to State and local law-enforcement agencies, district attorneys, judges, and the Department of Correction, when called upon by them and so directed.

(c) In the event that the Governor, in the exercise of his constitutional and statutory responsibilities, shall deem it necessary to utilize the services of more than one subunit of State government to provide protection to the people from natural or man-made disasters or emergencies, including but not limited to wars, insurrections, riots, civil disturbances, or accidents, the Secretary, under the direction of the Governor, shall serve as the chief coordinating officer for the State between the respective subunits so utilized.

(d) Whenever the Secretary exercises the authority provided in subsection (c) of this section, he shall be authorized to utilize and allocate all available State resources as are reasonably necessary to cope with the emergency or disaster, including directing of personnel and functions of State agencies or units thereof for the purpose of performing or facilitating the initial response to the disaster or emergency. Following the initial response, the Secretary, in consultation with the heads of the State agencies which have or appear to have the responsibility for dealing with the emergency or disaster, shall designate one or more lead agencies to be responsible for subsequent phases of the response to the emergency or disaster. Pending an opportunity to consult with the heads of such agencies, the Secretary may make interim lead agencies designations.

(e) Every department of State government is required to report to the Secretary, by the fastest means practicable, all natural or man-made disasters or emergencies, including but not limited to wars, insurrections, riots, civil disturbances, or accidents which appear likely to require the utilization of the services of more than one subunit of State government.

(f) The Secretary is authorized to adopt rules and procedures for the implementation of this section.

(g) Nothing contained in this section shall be construed to supersede or modify those powers granted to the Governor or the Council of State to declare and react to a state of disaster as provided in Chapter 166A of the General Statutes, the Constitution or elsewhere.

(h) Prior to any notification of proposed grant awards to State agencies for use in pursuing the objectives of the Governor's Crime Commission pursuant to subsection (a) of this section, the Secretary shall report to the Senate and House Appropriations Committees for review of the proposed grant awards.

(i) **(Expires June 1, 2009)** In addition to any other benefits that may be payable, the Secretary may use up to the sum of ten thousand dollars ($10,000) from funds available to the Department as reimbursement for funeral expenses to the family of a member of the State Highway Patrol who is killed in the line of duty, provided that funding is available. (1977, c. 70, s. 1; 1979, 2nd Sess., c. 1310, s. 1; 1981 (Reg. Sess., 1982), c. 1191, s. 17; 1985, c. 757, s. 164(c); 1985 (Reg. Sess., 1986), c. 1018, s. 13; 1998-212, s. 19.5(a); 2002-159, s. 31.5(b); 2002-190, s. 15; 2008-142, s. 1.)

Editor's Note. —

Session Laws 2008-142, s. 2 provides: "The Department of Crime Control and Public Safety shall study whether the Secretary should be authorized to reimburse the family for funeral expenses of a State law enforcement officer who is killed in the line of duty. The study shall include a determination on the maximum amount to be paid, and whether additional funds beyond those available to the Department should be appropriated for the expenses. The Department shall report the results of its study, with any recommendations for legislation, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by January 1, 2009."

Effect of Amendments. — Session Laws 2008-142, s. 1, effective June 1, 2008, and expiring June 1, 2009, added subsection (i).

Part 3. Governor's Crime Commission.

§ 143B-479. Governor's Crime Commission — powers and duties.

(a) The Governor's Crime Commission shall have the following powers and duties:

(1) To serve, along with its adjunct committees, as the chief advisory board to the Governor and to the Secretary of the Department of Crime Control and Public Safety on matters pertaining to the criminal justice system.

(2) To recommend a comprehensive statewide plan for the improvement of criminal justice throughout the State which is consistent with and serves to foster the following established goals of the criminal justice system:
  a. To reduce crime,
  b. To protect individual rights,
  c. To achieve justice,
  d. To increase efficiency in the criminal justice system,
  e. To promote public safety,
  f. To provide for the administration of a fair and humane system which offers reasonable opportunities for adjudicated offenders to develop progressively responsible behavior, and
  g. To increase professional skills of criminal justice officers.

(3) To advise State and local law-enforcement agencies in improving law enforcement and the administration of criminal justice;

(4) To make studies and recommendations for the improvement of law enforcement and the administration of criminal justice;
(5) To encourage public support and respect for the criminal justice system in North Carolina;
(6) To seek ways to continue to make North Carolina a safe and secure State for its citizens;
(7) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 15.
(8) To recommend objectives and priorities for the improvement of law enforcement and criminal justice throughout the State;
(9) To recommend recipients of grants for use in pursuing its objectives, under such conditions as are deemed to be necessary;
(9a) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 15.
(10) To serve as a coordinating committee and forum for discussion of recommendations from its adjunct committees formed pursuant to G.S. 143B-480; and
(11) To serve as the primary channel through which local law-enforcement departments and citizens can lend their advice, and state their needs, to the Department of Crime Control and Public Safety.

(a1) The Governor's Crime Commission shall review the level of gang activity throughout the State and assess the progress and accomplishments of the State, and of local governments, in preventing the proliferation of gangs and addressing the needs of juveniles who have been identified as being associated with gang activity.

The Governor's Crime Commission shall develop recommendations concerning the establishment of priorities and needed improvements with respect to gang prevention to the General Assembly on or before March 1 of each year.

(b) All directives of the Governor's Crime Commission shall be administered by the Director, Crime Control Division of the Department of Crime Control and Public Safety. (1975, c. 663; 1977, c. 11, s. 2; 1979, c. 107, s. 11; 1981, c. 931, s. 3; 1981 (Reg. Sess., 1982), c. 1191, s. 15; 2008-56, s.7; 2008-187, s. 44.5(b).)

Editor's Note. —

The last two paragraphs of Session Laws 2008-56, s. 7, as amended by Session Laws 2008-187, s. 44.5(b), were codified as subsection (a1) of this section at the direction of the Revisor of Statutes.

The remainder of Session Laws 2008-56, s. 7, as amended by Session Laws 2008-187, s. 44.5(b) provides, in part: "The Governor's Crime Commission shall develop the criteria for eligibility for funds appropriated for gang prevention and intervention. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written plan for the services to be provided by the funds. Funds shall be available to public and private entities or agencies for juvenile and adult programs that meet the criteria established by the Governor's Crime Commission. The Commission shall identify the cities and towns that do not have full-time parks and recreation staff, and provide targeted outreach and information to public and private agencies, and non-profit organizations, in those cities, towns, and unincorporated areas about their eligibility for these funds.

"The Governor's Crime Commission shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 15, 2009, on this program. The report shall include all of the following:

"(1) The grant award process.

"(2) A description of each grant awarded.

"(3) The performance criteria for evaluating grant programs.

"(4) A list of State grants awarded in the 2008 grant cycle."

§ 143B-480. Adjunct committees of the Governor's Crime Commission — creation; purpose; powers and duties.

Editor's Note. —

Session Laws 2008-107, s. 18.1, provides: "(a) The Governor's Crime Commission and its adjunct committees shall study the legal, systematic, and organizational impact of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons 16 and 17 years of age who commit crimes or infractions under State law or under an ordinance of local government. In particular, the Commission shall perform the following functions regarding the proposed expansion of the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include 16- and 17-year-olds who commit crimes or infractions under State or local law:

"(1) Identify the costs to the State court system and State and local law enforcement.

"(2) Review the relevant State laws that should be conformed or amended, including, but not limited to, the motor vehicle and criminal laws, the laws regarding expunction of criminal records, and other juvenile laws.

"(3) Review the experience of any other states which have within recent years expanded the juvenile justice jurisdiction to 16- and 17-year-olds.

"(4) Identify the practical issues for the Department of Juvenile Justice and Delinquency Prevention to implement best practices for programs and facilities that would meet the unique needs of the older youth under the proposal without adversely affecting the existing departmental programming.

"(5) Review the relevant State laws on sharing of juvenile information with other State departments and agencies.

"(6) Create a specific plan of the actions that are necessary to implement the expansion of the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention.

"(7) Determine the total cost of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention.

"(8) Conduct a cost benefit analysis of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention with specific information on possible future fiscal savings anywhere within State government as a result of expenditures necessary to implement the expansion.

"(9) Determine whether federal or other funds are available to aid in the transition and expansion, or both, of the age of juvenile jurisdiction to 16- and 17-year-olds.

"(b) The Commission may contract with an independent group or groups for the oversight and management of this study project, a service needs study, and a courts study, and to periodically report those findings to the Commission.

"(c) The Department of Juvenile Justice and Delinquency Prevention and all other departments, agencies, institutions, or officers of the State or any political subdivision of the State, shall cooperate with the Commission in this study, shall provide the Commission with any requested facilities, data, or other assistance, and help the Commission identify any collateral effect which might result from implementation of the proposal on the program and operations of the relevant State department, agency, or the political subdivision.

"(d) The Commission shall submit a report of its findings and legislative, administrative, and funding recommendations by April 1, 2009, to the General Assembly and the Governor.

"In addition to its final report, the Commission shall report in writing on the progress of this study on a quarterly basis beginning on October 1, 2008, and by the first day of every quarter thereafter until the Commission submits its final report to the General Assembly, to the chairs and cochairs, as applicable, of the standing committees or subcommittees of the General Assembly listed in subsections (e) and (f) of this section. A copy of each progress report made to the standing committee and subcommittee chairs shall also be filed in the Legislative Library.

"(e) The Commission shall report to all of the following standing committees or subcommittees in the House of Representatives pursuant to this section:

"(1) Appropriations: Justice and Public Safety.

"(2) Children, Youth, and Families.

"(3) Education: Preschool, Elementary, and Secondary Education.

"(4) Juvenile Justice.

"(5) All of the Judiciary Committees.

"(f) The Commission shall report to all of the following standing committees or subcommittees in the Senate pursuant to this section:

"(1) Appropriations: Justice and Public Safety.

"(2) Education and Higher Education.

"(3) All of the Judiciary Committees.

"(g) Of the funds appropriated by this act to the Department of Crime Control and Public Safety, the Governor's Crime Commission for the 2008-2009 fiscal year, the Commission may use up to two hundred thousand dollars ($200,000) to conduct the study authorized by this section. The Commission may also apply for, receive, or accept grants and contributions from any source of money or any other thing of value to be held and used for the purposes of the study authorized by this section."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2008."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5, is a severability clause.

Part 3A. Assistance Program for Victims of Rape and Sex Offenses.

§ 143B-480.1. Assistance Program for Victims of Rape and Sex Offenses.

Editor's Note. —

As to Sexual Assault and Rape Crisis Center Fund, see G.S. 143B-394.21.

§ 143B-480.2. Victim assistance.

(a) Eligibility for Assistance. — Sexual assault victims or victims of attempted sexual assault are eligible for assistance under this Program if the sexual assault or the attempted sexual assault is reported to a law enforcement officer within 72 hours of the occurrence of the assault or the attempted sexual assault and if a forensic medical examination is performed within 72 hours of the sexual assault or the attempted sexual assault. The Secretary may waive either 72-hour requirement for good cause. The term "sexual assault" as used in this section refers to the following crimes: first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5, or statutory rape as defined in G.S. 14-27.7A.

(b) Eligible Expenses. — Assistance is limited to the following expenses incurred by the victim:

(1) Immediate and short-term medical expenses.

(2) Ambulance services from the place of the attack to a place where medical treatment is provided.

(3) Mental health services provided by a professional licensed or certified by the State to provide such services.

(4) A forensic medical examination. As used in this section, the term "forensic medical examination" means an examination provided to a sexual assault victim eligible for assistance under subsection (a) of this section by medical personnel who gather evidence of a sexual assault in a manner suitable for use in a court of law. The examination should include an examination of physical trauma, a patient interview, and a collection and evaluation of evidence.

(5) Counseling treatment following the attack.

(c) Amount of Assistance. — The Program shall pay for the full out-of-pocket cost of the victim's forensic medical examination up to eight hundred dollars ($800.00). Specifically, the Program shall pay amounts for services in accordance with the following schedule:

Service:	**Maximum Amount Paid by Program**
Physician or SANE Nurse	$350.00

Service:	**Maximum Amount Paid by Program**
Hospital/Facility Fee	$250.00
Ambulance Fee	$200.00
Total:	**$800.00**

As used in this subsection, the term "SANE Nurse" means a licensed registered nurse trained under G.S. 90-171.38(b) who obtains preliminary histories, conducts in-depth interviews, and conducts medical examinations of rape victims or victims of related sexual offenses. The Program shall pay for all other eligible expenses set out in subsection (b) of this section in an amount not to exceed the difference between the full out-of-pocket cost of the forensic medical examination and one thousand dollars ($1,000). Assistance not to exceed fifty dollars ($50.00) shall be provided to victims to replace clothing that was held for evidence tests.

(d) Payment Directly to Provider. — If the entity seeking payment for expenses authorized under this section is a hospital, ambulance service, or mental health professional providing counseling, the Program shall make payment directly to that entity upon the filing of proper forms. If the entity seeking payment for expenses authorized under this section is an attending physician or licensed registered nurse, the Program shall make payment to a hospital, which shall then pay the entity seeking payment. Attending physicians and licensed registered nurses shall not bill or otherwise seek payment directly from the Program, but shall instead seek payment from the hospital that accepted payment on the entity's behalf. No payment for the cost of the forensic medical examination shall be made under this subsection unless the recipient agrees in writing that receipt of that payment shall constitute payment in full for the amount owed for the cost of the examination and expenses related to the examination.

(e) Judicial Review. — Upon an adverse determination by the Secretary on a claim for assistance under this Part, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County.

(f) The Secretary shall adopt rules to encourage, whenever practical, the use of licensed registered nurses trained under G.S. 90-171.38(b) to conduct medical examinations and procedures. (1981, c. 931, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 16; 1983, c. 715, ss. 1, 2; 1997-375, s. 4; 1998-212, s. 19.4(n); 2002-126, s. 18.6(a); 2002-159, ss. 47, 78; 2008-107, s. 18.2(a); 2008-118, s. 2.5.)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 18.2(a), effective July 1, 2008, rewrote the section.

Session Laws 2008-118, s. 2.5, effective July 1, 2008, in subsection (c), inserted "full out-of-pocket" twice, and added the sentence immediately following the schedule showing the amounts to be paid for services; and substituted "assistance under this Part" for "medical expenses" in subsection (e).

§ 143B-480.3. Reduction of benefits; restitution; actions.

(a) Assistance shall be reduced or denied to the extent the medical expenses are recouped through a public or private insurance plan or other victim benefit source, except that the Program shall pay any co-payment that the victim is required to pay in connection with the forensic medical examination up to the maximum amount that the Program will pay for a forensic medical exam under G.S. 143B-480.2(c).

(b) The Program shall be an eligible recipient for restitution or reparation under G.S. 15A-1021, 15A-1343, 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

(c) When any victim who:

(1) Has received assistance under this Part;
(2) Brings an action for damages arising out of the rape, attempted rape, sexual offense, or attempted sexual offense for which she received that assistance; and
(3) Recovers damages including the expenses for which she was awarded assistance,

the court shall make as part of its judgment an order for reimbursement to the Program of the amount of any assistance awarded less reasonable expenses allocated by the court to that recovery.

(d) Funds appropriated to the Department of Crime Control and Public Safety for this program may be used to purchase and distribute rape evidence collection kits approved by the State Bureau of Investigation. (1981, c. 931, s. 2; 1983, c. 715, s. 3; 2008-107, s. 18.2(b).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 18.2(b), effective July 1, 2008, added "except that the Program shall pay any co-payment that the victim is required to pay in connection with the forensic medical examination up to the maximum amount that the Program will pay for a forensic medical exam under G.S. 143B-480.2(c)" in subsection (a).

Part 5A. North Carolina Center for Missing Persons.

§ 143B-499.8. North Carolina Silver Alert System established.

(a) There is established within the North Carolina Center for Missing Persons the Silver Alert System. The purpose of the Silver Alert System is to provide a statewide system for the rapid dissemination of information regarding a missing person who is believed to be suffering from dementia or other cognitive impairment.

(b) If the Center receives a report that involves a missing person who is believed to be suffering from dementia or other cognitive impairment, for the protection of the missing person from potential abuse or other physical harm, neglect, or exploitation, the Center shall issue an alert providing for rapid dissemination of information statewide regarding the missing person. The Center shall make every effort to disseminate the information as quickly as possible when the person's status as missing has been reported to a law enforcement agency.

(c) The Center shall adopt guidelines and develop procedures for issuing an alert for missing persons believed to be suffering from dementia or other cognitive impairment and shall provide education and training to encourage radio and television broadcasters to participate in the alert. The guidelines and procedures shall ensure that specific health information about the missing person is not made public through the alert or otherwise.

(d) The Center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on the missing adult meeting the criteria of this section when information is available that would enable motorists to assist in the recovery of the missing person. The Center and the Department of Transportation shall develop guidelines for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign. (2007-469, s. 5; 2008-83, s. 1.)

Effect of Amendments. — Session Laws 2008-83, s. 1, effective July 11, 2008, deleted "the missing person is 18 years of age or older, and" preceding "the person's status" in the last sentence of subsection (b).

ARTICLE 12.

Department of Juvenile Justice and Delinquency Prevention.

Part 2. General Provisions.

§ 143B-515. Definitions.

In this Article, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. — The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Department of Juvenile Justice and Delinquency Prevention.

(2) Community-based program. — A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(3) County Councils. — Juvenile Crime Prevention Councils created under G.S. 143B-544.

(4) Court. — The district court division of the General Court of Justice.

(5) Repealed by Session Laws 2001-490, s. 2.39, effective June 30, 2001.

(6) Custodian. — The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. — Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(8) Department. — The Department of Juvenile Justice and Delinquency Prevention.

(9) Detention. — The secure confinement of a juvenile under a court order.

(10) Detention facility. — A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(11) District. — Any district court district as established by G.S. 7A-133.

(12) Judge. — Any district court judge.

(13) Judicial district. — Any district court district as established by G.S. 7A-133.

(14) Juvenile. — Except as provided in subdivisions (7) and (22) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(15) Juvenile court. — Any district court exercising jurisdiction under this Chapter.

(15a) Juvenile court counselor. — A person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.

(16) Post-release supervision. — The supervision of a juvenile who has been returned to the community after having been committed to the Department for placement in a training school.

(17) Probation. — The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a juvenile court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(18) Protective supervision. — The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a juvenile court counselor.

(19) Secretary. — The Secretary of Juvenile Justice and Delinquency Prevention.

(20) Repealed by Session Laws 2008-118, s. 3.12(b), effective July 1, 2008.

(21) Repealed by Session Laws 2001-95, s. 3, effective May 18, 2001.

(22) Undisciplined juvenile. —

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

(23) Youth development center. — A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department. (1998-202, ss. 1(b), 2(a); 2000-137, s. 1(b); 2001-95, ss. 3, 4; 2001-490, s. 2.39; 2008-118, s. 3.12(b).)

Effect of Amendments. — Session Laws 2008-118, s. 3.12(b), effective July 1, 2008, deleted subdivision (20) regarding the definition of State Council.

§ 143B-516. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.

(a) The head of the Department is the Secretary. The Secretary shall have the powers and duties conferred by this Chapter, delegated by the Governor, and conferred by the Constitution and laws of this State. The Secretary shall be responsible for effectively and efficiently organizing the Department to promote the policy of the State as set forth in this Article and to promote public safety and to prevent the commission of delinquent acts by juveniles.

(b) The Secretary shall have the following powers and duties:

(1) Give leadership to the implementation as appropriate of State policy that requires that youth development centers be phased out as populations diminish.

(2) Close a State youth development center when its operation is no longer justified and transfer State funds appropriated for the operation of that youth development center to fund community-based programs, to

purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing youth development centers, after consultation with the Joint Legislative Commission on Governmental Operations.

(3) Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.

(4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.

(5) Adopt rules to implement this Article and the responsibilities of the Secretary and the Department under Chapter 7B of the General Statutes. The Secretary may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.

(6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation, and post-release supervision services in all district court districts of the State. The system shall provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

(7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.

(8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.

(9) Develop standards, approve yearly program evaluations, and make recommendations based on the evaluations to the General Assembly concerning continuation funding.

(10) Collect expense data for every program operated and contracted by the Department.

(11) Develop a formula for funding, on a matching basis, juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Department.

(12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services and provide information on the availability of potential funding sources and assistance in making application for needed funding.

(13) Develop and administer a comprehensive juvenile justice information system to collect data and information about delinquent juveniles for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.

(15) Appoint the chief court counselor in each district upon the recommendation of the chief district court judge of that district.

(16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of juveniles. The plan shall include attendance at appropriate professional meetings and opportunities for educational leave for academic study.

(17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

(17a) Set, in consultation with the Office of State Personnel, the salary supplement paid to teachers, instructional support personnel, and school-based administrators who are employed at juvenile facilities and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the local school administrative unit where the job site is located. These salary supplements shall not be paid to central office staff. Nothing in this subdivision shall be construed to include "merit pay" under the term "salary supplement".

(18) Designate persons, as necessary, as State juvenile justice officers, to provide for the care and supervision of juveniles placed in the physical custody of the Department.

(c) Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the Secretary shall prescribe the functions, powers, duties, and obligations of every agency or division in the Department.

(d) Where Department statistics indicate the presence of minority youth in juvenile facilities disproportionate to their presence in the general population, the Department shall develop and recommend appropriate strategies designed to ensure fair and equal treatment in the juvenile justice system.

(e) The Department may provide consulting services and technical assistance to courts, law enforcement agencies, and other agencies, local governments, and public and private organizations. The Department may develop or assist Juvenile Crime Prevention Councils in developing community needs, assessments, and programs relating to the prevention and treatment of delinquent and undisciplined behavior.

(f) The Department shall develop a cost-benefit model for each State-funded program. Program commitment and recidivism rates shall be components of the model. (1998-202, ss. 1(b), 2(b), 2(f); 1998-217, ss. 57(2), 57(3); 2000-137, s. 1(b); 2001-95, s. 5; 2001-490, s. 2.40; 2003-284, s. 17.2(a); 2005-276, s. 29.19(b); 2006-203, s. 111; 2008-118, s. 3.12(c).)

Editor's Note. —

Session Laws 2008-107, s. 14.8(a) provides: "The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, shall conduct a feasibility study for measuring the effectiveness of programs that receive Juvenile Crime Prevention Council (JCPC) grant funds. All State agencies and community-based programs that receive JCPC funding shall provide data as requested by the Commission.

"The Sentencing and Policy Advisory Commission shall provide an interim report on the results of the feasibility study to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by December 1, 2008. The final plan for measuring the effectiveness of JCPC programs shall be provided to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2009."

Grant Reporting and Funding. — Session Laws 2007-323, s. 18.2(a) and (b), as amended by Session Laws 2008-107, s. 16.1(a), provides: "(a) On or before October 1 of each year, the

Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council grants, including:

"(1) The amount of the grant awarded.

"(2) The membership of the local committee or council administering the award funds on the local level.

"(3) The type of program funded.

"(4) A short description of the local services, programs, or projects that will receive funds.

"(5) Identification of any programs that received grant funds at one time but for which funding has been eliminated by the Department.

"(6) The number of at-risk, diverted, and adjudicated juveniles served by county.

"(7) The Department's actions to ensure that county JCPC's prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.

"(8) The total cost for each funded program, including the cost per juvenile and the essential elements of the program.

"A written copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly.

"(b) Each county in which local programs receive Juvenile Crime Prevention Council grant funds from the Department of Juvenile Justice and Delinquency Prevention shall certify annually through its local council to the Department that funds received are not used to duplicate or supplant other programs within the county." For prior similar provisions, see Session Laws 2001-424, s. 24.2(a) to (c), Session Laws 2003-284, s. 15.2(a) and (b), and Sessions Laws 2005-276, s. 16.2.

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-118, s. 3.12(c), effective July 1, 2008, deleted the third sentence in subsection (f), relating to recommendations of the State Advisory Council.

§ 143B-519: Repealed by Session Laws 2008-107, s. 14.8(b), effective July 1, 2008.

Grant Reporting and Funding. — Session Laws 2007-323, s. 18.2(a) and (b), as amended by Session Laws 2008-107, s. 16.1(a), provides: "(a) On or before October 1 of each year, the Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council grants, including:

"(1) The amount of the grant awarded.

"(2) The membership of the local committee or council administering the award funds on the local level.

"(3) The type of program funded.

"(4) A short description of the local services, programs, or projects that will receive funds.

"(5) Identification of any programs that received grant funds at one time but for which funding has been eliminated by the Department.

"(6) The number of at-risk, diverted, and adjudicated juveniles served by county.

"(7) The Department's actions to ensure that county JCPC's prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.

"(8) The total cost for each funded program, including the cost per juvenile and the essential elements of the program.

"A written copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly.

"(b) Each county in which local programs receive Juvenile Crime Prevention Council grant funds from the Department of Juvenile Justice and Delinquency Prevention shall certify annually through its local council to the Department that funds received are not used to duplicate or supplant other programs within the county." For prior similar provisions, see Session Laws 2001-424, s. 24.2(a) to (c), Session Laws 2003-284, s. 15.2(a) and (b), and Sessions Laws 2005-276, s. 16.2."

JCPC Effectiveness Study. — Session

Laws 2008-107, s. 14.8(a), provides: "(a) The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, shall conduct a feasibility study for measuring the effectiveness of programs that receive Juvenile Crime Prevention Council (JCPC) grant funds. All State agencies and community-based programs that receive JCPC funding shall provide data as requested by the Commission.'"The Sentencing and Policy Advisory Commission shall provide an interim report on the results of the feasibility study to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by December 1, 2008. The final plan for measuring the effectiveness of JCPC programs shall be provided to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2009."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Part 6. Juvenile Crime Prevention Councils.

§ 143B-543. Legislative intent.

It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent. The primary intent of this Part is to develop community-based alternatives to youth development centers and to provide community-based delinquency, substance abuse, and gang prevention strategies and programs. Additionally, it is the intent of the General Assembly to provide noninstitutional dispositional alternatives that will protect the community and the juveniles.

These programs and services shall be planned and organized at the community level and developed in partnership with the State. These planning efforts shall include appropriate representation from local government, local public and private agencies serving juveniles and their families, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The planning bodies at the local level shall be the Juvenile Crime Prevention Councils. (1998-202, s. 1(b); 2000-137, s. 1(b); 2001-95, s. 5; 2008-56, s. 2.)

Editor's Note. — Session Laws 2008-56, s. 1, provides: "This act shall be known and may be cited as the 'North Carolina Street Gang Prevention and Intervention Act.'"

Effect of Amendments. — Session Laws 2008-56, s. 2, effective July 6, 2008, in the first paragraph, deleted "and" following "delinquency" and inserted "and gang" following "substance abuse."

§ 143B-544. Creation; method of appointment; membership; chair and vice-chair.

Grant Reporting and Funding. — Session Laws 2007-323, s. 18.2(a) and (b), as amended by Session Laws 2008-107, s. 16.1(a), provides: "(a) On or before October 1 of each year, the Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council grants, including:

"(1) The amount of the grant awarded.

"(2) The membership of the local committee or council administering the award funds on the local level.

"(3) The type of program funded.

"(4) A short description of the local services, programs, or projects that will receive funds.

"(5) Identification of any programs that received grant funds at one time but for which funding has been eliminated by the Department.

"(6) The number of at-risk, diverted, and adjudicated juveniles served by county.

"(7) The Department's actions to ensure that county JCPC's prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.

"(8) The total cost for each funded program, including the cost per juvenile and the essential elements of the program.

"A written copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143B-549. Powers and duties.

(a) Each County Council shall review annually the needs of juveniles in the county who are at risk of delinquency or who have been adjudicated undisciplined or delinquent and the resources available to address those needs. In particular, each County Council shall assess the needs of juveniles in the county who are at risk or who have been associated with gangs or gang activity, and the local resources that are established to address those needs. The Council shall develop and advertise a request for proposal process and submit a written plan of action for the expenditure of juvenile sanction and prevention funds to the board of county commissioners for its approval. Upon the county's authorization, the plan shall be submitted to the Department for final approval and subsequent implementation.

(b) Each County Council shall ensure that appropriate intermediate dispositional options are available and shall prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.

(c) On an ongoing basis, each County Council shall:

(1) Assess the needs of juveniles in the community, evaluate the adequacy of resources available to meet those needs, and develop or propose ways to address unmet needs.

(2) Evaluate the performance of juvenile services and programs in the community. The Council shall evaluate each funded program as a condition of continued funding.

(3) Increase public awareness of the causes of delinquency and of strategies to reduce the problem.

(4) Develop strategies to intervene and appropriately respond to and treat the needs of juveniles at risk of delinquency through appropriate risk assessment instruments.

(5) Provide funds for services for treatment, counseling, or rehabilitation for juveniles and their families. These services may include court-ordered parenting responsibility classes.

(6) Plan for the establishment of a permanent funding stream for delinquency prevention services.

(7) Develop strategies to intervene and appropriately respond to the needs of juveniles who have been associated with gang activity or who are at risk of becoming associated with gang activity.

(d) The Councils may examine the benefits of joint program development between counties within the same judicial district. (1998-202, s. 1(b); 2000-137, s. 1(b); 2008-56, s. 3.)

Editor's Note. — Session Laws 2008-56, s. 1, provides: "This act shall be known and may be cited as the 'North Carolina Street Gang Prevention and Intervention Act.'"

Effect of Amendments. — Session Laws 2008-56, s. 3, effective July 6, 2008, inserted the second sentence in subsection (a); added subdivision (c)(7).

§ 143B-550. Funding for programs.

Editor's Note. —

Session Laws 2008-107, s. 14.8(a), provides: "(a) The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, shall conduct a feasibility study for measuring the effectiveness of programs that receive Juvenile Crime Prevention Council (JCPC) grant funds. All State agencies and community-based programs that receive JCPC funding shall provide data as requested by the Commission.

"The Sentencing and Policy Advisory Commission shall provide an interim report on the results of the feasibility study to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by December 1, 2008. The final plan for measuring the effectiveness of JCPC programs shall be provided to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2009."

Session Laws 2008-107, s. 16.3 provides: "The Department of Juvenile Justice and Delinquency Prevention, the NC Juvenile Services Association, and the Community Alternatives for Youth, in consultation with the Fiscal Research Division, shall develop and propose a revision to the county allocation formula for Juvenile Crime Prevention Councils. The Department shall report the recommendations to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the Subcommittees on Justice and Public Safety of the House of Representatives and Senate Appropriations Committees by December 1, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Part 7. State Advisory Council on Juvenile Justice and Delinquency Prevention.

§§ 143B-556, 143B-557: Repealed by Laws 2008-118, s. 3.12(a), effective July 1, 2008.

Editor's Note. — Session Laws 2008-187, s. 44.5(a), repealed Session Laws 2008-56, s. 4, which amended G.S. 143B-557 by inserting "gang prevention" in subdivisions (3) and (6) and adding a subdivision (5a) relating to review of the level of gang activity in the state.

Chapter 143C.

State Budget Act.

Article 1.

General Provisions.

§ 143C-1-1. Purpose and definitions.

Editor's Note. —

Session Laws 2008-107, s. 30.1 provides: "The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 2.

Director of the Budget.

§ 143C-2-1. Governor is Director of the Budget.

Editor's Note. —

Session Laws 2008-107, s. 22.5 provides: "The Office of State Budget and Management shall conduct a staffing survey of all State agencies and universities that use the BEACON system and determine the number of FTE staff assigned to BEACON training. The Office of State Budget and Management shall submit a final report outlining its findings and staffing recommendations to the House Appropriations Subcommittee on General Government, the Senate Appropriations Subcommittee on General Government and Information Technology, and the Fiscal Research Division by March 1, 2009."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 4.

Budget Requirements.

§ 143C-4-2. Savings Reserve Account and appropriation of General Fund unreserved fund balance.

Editor's Note. —

Session Laws 2008-107, s. 2.2(c1), provides: "Notwithstanding G.S. 143C-4-2, the State Controller shall not transfer any funds from the unreserved fund balance to the Savings Reserve Account on June 30, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143C-4-3. Repairs and Renovations Reserve Account.

Editor's Note. —

Session Laws 2008-107, s. 2.2(b), provides: "Notwithstanding the provisions of G.S. 143C-4-3, the State Controller shall transfer sixty nine million eight hundred thirty nine thousand two hundred thirty-eight dollars ($69,839,238) from the unreserved fund balance to the Repairs and Renovations Reserve Account on June 30, 2008. This subsection becomes effective June 30, 2008."

Session Laws 2008-107, s. 2.2(c) provides: "Funds transferred under this section to the Repairs and Renovations Reserve Account are appropriated for the 2008-2009 fiscal year to be used in accordance with G.S. 143C-4-3."

Session Laws 2008-107, s. 27.3(a), provides: "Of the funds in the Reserve for Repairs and Renovations for the 2008-2009 fiscal year, forty-six percent (46%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143C-4-3, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty-four percent (54%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143C-4-3.

"Notwithstanding G.S. 143C-4-3, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 6.

Administration of the Budget.

Part 1. Certification and Administration of the Budget.

§ 143C-6-1. Budget enacted by the General Assembly; certified budgets of State agencies.

Editor's Note. — Session Laws 2008-107, s. 25.4(a)-(e), provides: "(a) Notwithstanding G.S. 143C-6-1 and G.S. 143C-6-7, the Department of Transportation and the Office of State Budget and Management shall review each of the Department's divisions' expenditure patterns and realign the continuation and certified budget for the 2009-2011 Fiscal Biennium. The certified budget shall become the current expenditure plan for each division based on anticipated expenditure patterns.

"(b) The Department of Transportation shall prepare a report on the cash spending plan based on the certified budget's fund codes. This report shall show cash expenditure plans for the 2008-2009 fiscal year.

"(c) The Department of Transportation and the Office of State Budget and Management shall jointly study alternatives and enhancements to the current budgeting process that highlight and more closely align the Department's division, DMV, ferry, rail, public transportation, and administration spending with performance outcomes and metrics. Study goals include greater clarity of budgets and cash work plans, flexible funding capabilities, and projected investment performance.

"(d) The Department of Transportation shall develop a quarterly report that evaluates the Department's achievement of performance measures for safety, preservation, capacity improvements, ITS, effective and efficient business practices, spending plans, DMV services, minority and disadvantaged business goals, and other relevant performance indicators. Division performance comparisons will be included where applicable. The fourth quarter report will serve as the annual performance evaluation and shall be submitted to the Governor and Legislature, including the Joint Legislative Transportation Oversight Committee.

"(e) The Department of Transportation and the Office of State Budget and Management shall report on its cash spending plan for the 2008-2009 fiscal year and shall present recommendations for a revised budget process to the Joint Legislative Transportation Oversight Committee, Appropriations Subcommittee for Transportation, and the Fiscal Research Division no later than November 1, 2008. The Department of Transportation shall present the Fiscal Year 2009 first quarter performance report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division no later than November 15, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143C-6-4. Budget Adjustments Authorized.

Editor's Note. — Session Laws 2007-323, s. 6.1(b), as amended by Session Laws 2008-107, s. 6.1, provides: "Receipts collected in a fiscal year in excess of the amounts authorized by this section shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by the State Budget Act.

"Overrealized receipts are appropriated up to the amounts necessary to implement this subsection.

"In addition to the consultation and reporting requirements set out in G.S. 143C-6-4, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on any overrealized receipts approved for expenditure under this subsection by the Director of the Budget. The report shall include the source of the receipt, the amount overrealized, the amount authorized for expenditure, and the rationale for expenditure."

Session Laws 2007-323, 7.29.(a), as amended by Session Laws 2008-194, s. 9, which expires June 30, 2009, provides: "Notwithstanding G.S. 143C-6-4, the Department of Public Instruction may reorganize in accordance with the plan adopted by the State Board of Education. The Department shall report to the Joint Legislative Commission on Governmental Operations on the reorganization."

Session Laws 2008-107, s. 6.3, provides: "Notwithstanding G.S. 143C-6-4, the Office of State Budget and Management may adjust the enacted budget by making transfers among purposes or programs for the purpose of consolidating budget and fund codes or eliminating inactive budget and fund codes. The Office of State Budget and Management shall change the authorized budget to reflect these adjustments."

Session Laws 2008-107, s. 6.9, provides: "Notwithstanding G.S. 143C-6-4, State agencies may, with approval of the Director of the Budget, spend funds received from grants awarded subsequent to the enactment of this act, provided the applications for the grants were made prior to May 14, 2008. The Office of State Budget and Management shall work with the recipient State agencies to budget grants award according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award, additional State personnel may be employed on a permanent or time-limited basis. The Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to expending any funds received from grant awards. Funds received from such grants are hereby appropriated and shall be incorporated into the certified budget of the recipient State agency."

Session Laws 2008-107, s. 8.2(b), provides: "Notwithstanding G.S. 143C-6-4, the Community Colleges System Office may, subject to the approval of the Office of State Budget and Management and in consultation with the Office of Information Technology Services, use funds appropriated in this act for the College Information System to create a maximum of three positions. Personnel positions created pursuant to this subsection shall be dedicated to maintaining and administering information technology and software upgrades to the College Information System." For prior similar provisions, see Session Laws 2007-323, s. 8.1(b).

Session Laws 2008-107, s. 10.1A, provides: "Notwithstanding G.S. 143C-6-4, for the 2008-2009 fiscal year the Department of Health and Human Services may, with approval of the Office of State Budget and Management, take actions necessary to identify and realign or adjust the authorized budgets of the Department to fund payments for audit services provided by the Office of State Auditor and for data processing services billed by the State Information Technology Services office."

Session Laws 2008-107, s. 10.10A(b), provides: "The Department of Health and Human Services, Division of Medical Assistance, shall make every effort to achieve savings within its operational budget and shall take the steps necessary to achieve overall budget reductions from the General Fund required by this act. Notwithstanding G.S. 143C-6-4(b)(3), the Department may use funds appropriated to the Division of Medical Assistance to address shortfalls in funds for direct services within the Medical Assistance Payments budget of the Division of Medical Assistance."

Session Laws 2008-107, s. 10.10A(c), provides: "Notwithstanding G.S. 143C-6-4(b)(3), the Department of Health and Human Services may use funds appropriated to the Division of Medical Assistance to address contract shortfalls within the Division of Medical Assistance budget."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143C-6-7. Compliance with Chapter and appropriations acts by State agencies.

Editor's Note. — Session Laws 2008-107, s. 25.4(a)-(e), provides: "(a) Notwithstanding G.S. 143C-6-1 and G.S. 143C-6-7, the Department of Transportation and the Office of State Budget and Management shall review each of the Department's divisions' expenditure patterns and realign the continuation and certified budget for the 2009-2011 Fiscal Biennium. The certified budget shall become the current expenditure plan for each division based on anticipated expenditure patterns.

"(b) The Department of Transportation shall prepare a report on the cash spending plan based on the certified budget's fund codes. This report shall show cash expenditure plans for the 2008-2009 fiscal year.

"(c) The Department of Transportation and the Office of State Budget and Management shall jointly study alternatives and enhancements to the current budgeting process that highlight and more closely align the Department's division, DMV, ferry, rail, public transportation, and administration spending with performance outcomes and metrics. Study goals include greater clarity of budgets and cash work plans, flexible funding capabilities, and projected investment performance.

"(d) The Department of Transportation shall develop a quarterly report that evaluates the Department's achievement of performance measures for safety, preservation, capacity improvements, ITS, effective and efficient business practices, spending plans, DMV services, minority and disadvantaged business goals, and other relevant performance indicators. Division performance comparisons will be included where applicable. The fourth quarter report will serve as the annual performance evaluation and shall be submitted to the Governor and Legislature, including the Joint Legislative Transportation Oversight Committee.

"(e) The Department of Transportation and the Office of State Budget and Management shall report on its cash spending plan for the 2008-2009 fiscal year and shall present recommendations for a revised budget process to the Joint Legislative Transportation Oversight Committee, Appropriations Subcommittee for Transportation, and the Fiscal Research Division no later than November 1, 2008. The Department of Transportation shall present the Fiscal Year 2009 first quarter performance report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division no later than November 15, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143C-6-9. Use of lapsed salary savings.

Editor's Note. —

Session Laws 2007-323, s. 14.2, as amended by Session Laws 2008-107, s. 14.5, provides: "Notwithstanding G.S. 143C-6-9, the Judicial Department may use up to the sum of one million five hundred thousand dollars ($1,500,000) from funds available to the Department to provide the State match needed in order to receive grant funds. Except as provided in subsection (b) of this section, prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds."

Session Laws 2007-323, s. 17.12, as amended by Session Laws 2008-107, s. 17.2, provides: "Notwithstanding the provisions of G.S. 143C-6-9, the Department of Correction may use up to the sum of one million two hundred thousand dollars ($1,200,000) during the 2007-2008 fiscal year and up to the sum of one million five hundred thousand dollars ($1,500,000) during the 2008-2009 fiscal year from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Part 3. Non-State Entities Receiving State Funds.

§ 143C-6-22. Use of State funds by non-State entities.

Editor's Note. —

Session Laws 2008-107, s. 13.9. (a)-(e) provides: "(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of four million dollars ($4,000,000) for the 2008-2009 fiscal year shall be used to continue and expand the Rural Economic Transition Program for the following purposes:

"(1) To provide grants to local governments for building reuse and restoration projects leading to job or business creation, including brownfield assessment and remediation projects leading to productive reuse, with priority given to towns or communities with populations of less than 10,000.

"(2) To provide grants to support economic recovery and revitalization in small towns, with priority given to towns with populations less than 10,000 experiencing hardship posed by business losses, devastation from natural disasters, or persistent poverty.

"(3) To provide grants for innovative local and regional economic development and agriculture diversification projects that spur business activity, job creation, or public or private investment.

"(b) Priority for grant funds shall be given to eligible applicants in development tier one areas as defined in G.S. 143B-437.08.

"(c) The Rural Center may use a portion of the funds appropriated in this section, not to exceed two percent (2%), for administration of the programs for which funds are appropriated in this section.

"(d) The Rural Center may contract with other agencies and institutions for certain aspects of the programs for which funds are appropriated in this section, including the design of program guidelines and evaluation of program results.

"(e) The Rural Center shall report to the Joint Legislative Commission on Governmental Operations concerning the progress of the programs for which funds are appropriated in this section by July 1, 2009."

ARTICLE 9.

Special Funds and Fee Reports.

§ 143C-9-3. Settlement Reserve Fund.

Editor's Note. —

Session Laws 2008-107, s. 2.2(e), provides: "Notwithstanding G.S. 143C-9-3, of the funds credited to the Tobacco Trust, the sum of five million dollars ($5,000,000) shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2008-2009 fiscal year. These funds shall be transferred on or after April 30, 2009."

Session Laws 2008-107, s. 2.2(f), provides: "Notwithstanding G.S. 143C-9-3, of the funds credited to the Health Trust Account, the sum of five million dollars ($5,000,000) that would otherwise be deposited in the Fund Reserve shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2008-2009 fiscal year."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Chapter 143D.

The State Governmental Accountability and Internal Control Act.

Article 2.

Internal Control Responsibilities.

Sec.
143D-8. Internal control documentation.

Article 2.

Internal Control Responsibilities.

§ 143D-8. Internal control documentation.

Each State agency shall maintain documentation, as prescribed by the State Controller, of the system of internal control within that agency. All internal control documentation shall be available upon request for examination by the State Controller and the State Auditor. (2007-520, s. 1; 2008-187, s. 27.)

Effect of Amendments. — Session Laws 2008-187, s. 27, effective August 7, 2008, substituted "Internal" for "Internet" in the catchline.

Chapter 146.

State Lands.

SUBCHAPTER II. ALLOCATED STATE LANDS.

Article 6.

Acquisitions.

Sec.
146-23.2. Purchase of buildings constructed or renovated to a certain energy-efficiency standard.

SUBCHAPTER IV. MISCELLANEOUS.

Article 14.

General Provisions.

Sec.
146-65. Exemptions from Chapter.

SUBCHAPTER II. ALLOCATED STATE LANDS.

ARTICLE 6.

Acquisitions.

§ 146-23.2. Purchase of buildings constructed or renovated to a certain energy-efficiency standard.

(a) A State agency shall not acquire by purchase any building unless the building was designed and constructed to at least the same standards for energy efficiency and water use that the design and construction of a comparable State building was required to meet at the time the building under consideration for purchase was constructed. Further, a State agency shall not acquire by purchase any building that had a major renovation unless the major renovation of the building was designed and constructed to at least the same standards for energy efficiency and water use that the design and construction of a major renovation of a comparable State building was required to meet at the time the building under consideration for purchase was renovated.

(b) This section does not apply to the purchase of a building having historic, architectural, or cultural significance under Part 4 of Article 2 of Chapter 143B of the General Statutes. This section does not apply to buildings that are acquired by devise or gift. (2008-203, s. 3.)

Editor's Note. — Session Laws 2008-203, s. 7, made this section effective August 8, 2008.

§ 146-30. Application of net proceeds.

Editor's Note. —

Session Laws 2008-107, s. 27.4.(b), provides: "From funds deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services pursuant to G.S. 146-30, the sum of thirty thousand dollars ($30,000) for the 2008-2009 fiscal year shall be transferred to the Department of Agriculture and Consumer Services to be used, notwithstanding G.S. 146-30, by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, environmental studies, and for the management of the plant conservation program preserves owned by the Department."

SUBCHAPTER IV. MISCELLANEOUS.

ARTICLE 14.

General Provisions.

§ 146-65. Exemptions from Chapter.

This Chapter does not apply to any of the following:

(1) The acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation or the North Carolina Turnpike Authority.

(2) The North Carolina State Ports Authority in exercising its powers under G.S. 143B-452 through G.S. 143B-467. (1957, c. 584, s. 6; G.S., s. 146-112; 1959, c. 683, s. 1; 1973, c. 507, s. 5; 1993, c. 553, s. 52.3; 2008-225, s. 10.)

Effect of Amendments. — Session Laws 2008-225, s. 10, effective August 17, 2008, rewrote the section.

Chapter 147.

State Officers.

Article 3.

The Governor.

Sec.
147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

Part 4. Procurement of Information Technology.

147-33.104. (Effective July 1, 2010, until January 1, 2011) Purchase by State agencies and governmental entities of certain computer equipment prohibited.
147-33.104. (Effective January 1, 2011) Purchase by State agencies and governmental entities of certain computer equipment prohibited.

Article 4.

Secretary of State.

147-54. Printing, distribution and sale of the North Carolina Manual.

Article 5A.

Auditor.

Sec.
147-64.6. Duties and responsibilities.
147-64.6B. Reports of improper governmental activities.

Article 6.

Treasurer.

147-69.2. Investments authorized for special funds held by State Treasurer.
147-69.3. Administration of State Treasurer's investment programs.
147-69.6. Swain County Settlement Trust Fund.

Article 6C.

Health and Wellness Trust Fund.

147-86.30. Health and Wellness Trust Fund established.

Article 1.

Classification and General Provisions.

§ 147-1. Public State officials classified.

Editor's Note. — Session Laws 2008-181, ss. 40.1 through 40.3, provides for the creation of a Study Commission on Compensation of the Governor's Cabinet and State Elected Officials to study and report on whether such officials are paid according to the duties of their offices. The final report, including any proposed legislation, is due by January 15, 2009, and the Commission terminates upon filing its report or on January 15, 2009, whichever is earlier.

Article 3.

The Governor.

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

(a) The salary of the Governor shall be one hundred thirty-nine thousand five hundred ninety dollars ($139,590) annually, payable monthly.

(b) He shall be paid annually the sum of eleven thousand five hundred dollars ($11,500) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly.

(c) In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by a warrant drawn on the State Treasurer. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C.S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1965, c. 1091, s. 1; 1971, c. 1083, s. 1; 1973, c. 600; 1977, 2nd Sess., c. 1136, s. 39; c. 1249, s. 5; 1979, 2nd Sess., c. 1137, s. 31; 1981, c. 1127, s. 7; 1983, c. 761, ss. 194, 195; c. 913, s. 45; 1983 (Reg. Sess., 1984), c. 1034, s. 217; 1985, c. 479, s. 215; 1985 (Reg. Sess., 1986), c. 1014, s. 20; 1987, c. 738, s. 11; 1987 (Reg. Sess., 1988), c. 1086, ss. 6, 172; 1989, c. 752, ss. 23(a), (b), 167; 1991 (Reg. Sess., 1992), c. 900, ss. 32(a), (b), 182; 1993, c. 321, s. 48; 1993 (Reg. Sess., 1994), c. 769, s. 7.1; 1995, c. 507, s. 7.1(a); 1996, 2nd Ex. Sess., c. 18, s. 28(a); 1997-443, s. 33(a); 1998-153, s. 3(a); 1999-237, s. 28(a); 2000-67, s. 26(a); 2004-124, s. 31.1(b); 2005-276, s. 29.1(a); 2006-66, s. 22.1(a); 2007-323, s. 28.1(a); 2008-107, s. 26.1(a).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 26.1(a), effective July 1, 2008, substituted "one hundred thirty-nine thousand five hundred ninety dollars ($139,590)" for "one hundred thirty-five thousand eight hundred fifty-four dollars ($135,854)" in subsection (a).

Part 4. Procurement of Information Technology.

§ 147-33.104. (Effective July 1, 2010, until January 1, 2011) Purchase by State agencies and governmental entities of certain computer equipment prohibited.

(a) The exemptions set out in G.S. 147-33.80 do not apply to this section.

(b) No State agency, political subdivision of the State, or other public body shall purchase computer equipment, as defined in G.S. 130A-309.91, from any manufacturer determined not to be in compliance with the requirements of G.S. 130A-309.93 as determined from the list provided by the Department of Environment and Natural Resources pursuant to G.S. 130A-309.95(1).

(c) The Office of Information Technology Services shall make the list available to political subdivisions of the State and other public bodies. A manufacturer that is not in compliance with the requirements of G.S. 130A-309.93 shall not sell or offer for sale computer equipment to the State, a political subdivision of the State, or other public body. (2007-550, s. 16.5; 2008-198, s. 11.4; 2008-208, s. 7.)

Editor's Note. — Laws 2008-198, s. 11.4 provides: "If House Bill 819 becomes law, the prefatory language to Section 7 of that act is amended by deleting 'Section 16' and substituting 'Section 16.6.'" House Bill 819 is Session Laws 2008-208, which became effective August 9, 2008.

Session Laws 2007-550, s. 16.6(b), as amended by Session Laws 2008-208, s. 7(b), made this section effective July 1, 2010.

Section Set Out Twice. — The section above is effective until January 1, 2011. For the section as amended January 1, 2011, see the following section, also numbered G.S. 147-33.104.

§ 147-33.104. (Effective January 1, 2011) Purchase by State agencies and governmental entities of certain computer equipment prohibited.

(a) The exemptions set out in G.S. 147-33.80 do not apply to this section.

(b) No State agency, political subdivision of the State, or other public body shall purchase computer equipment or televisions, as defined in G.S. 130A-309.91, from any manufacturer that the Secretary determines is not in compliance with the requirements of G.S. 130A-309.93 or G.S. 130A-309.93A as determined from the list provided by the Department of Environment and Natural Resources pursuant to G.S. 130A-309.95(1). The Secretary shall issue written findings upon a determination of noncompliance. A determination of noncompliance by the Secretary is reviewable under Article 3 of Chapter 150B of the General Statutes.

(c) The Office of Information Technology Services shall make the list available to political subdivisions of the State and other public bodies. A manufacturer that is not in compliance with the requirements of G.S. 130A-309.93 shall not sell or offer for sale computer equipment or televisions to the State, a political subdivision of the State, or other public body. (2007-550, s. 16.5; 2008-198, s. 11.4; 2008-208, ss. 5, 7.)

Editor's Note. — Session Laws 2007-550, s. 16.6(b), as amended by Session Laws 2008-208, s. 7(b), made this section effective July 1, 2010.

Laws 2008-198, s. 11.4 provides: "If House Bill 819 becomes law, the prefatory language to Section 7 of that act is amended by deleting 'Section 16' and substituting 'Section 16.6.'" House Bill 819 is Session Laws 2008-208, which became effective August 9, 2008.

Section Set Out Twice. — The section above is effective January 1, 2011. For the section in effect from July 1, 2010, until January 1, 2011, see the preceding section, also numbered G.S. 147-33.104.

Effect of Amendments. — Session Laws 2008-208, s. 5, effective January 1, 2011, in subsection (b), inserted "or televisions," substituted "that the Secretary determines is not" for "determined not to be," inserted "or G.S. 130A-309.93A," and added the last two sentences; and in subsection (c), inserted "or televisions."

ARTICLE 4.

Secretary of State.

§ 147-54. Printing, distribution and sale of the North Carolina Manual.

The Secretary of State shall have printed biennially for distribution and sale, two thousand three hundred fifty (2,350) copies of the North Carolina Manual, and shall make distribution to the State agencies, individuals, institutions and others as herein set forth.

NORTH CAROLINA STATE GOVERNMENT:

Members of the General Assembly	1 ea.
Officers of the General Assembly	1 ea.
Offices of the Clerk of each House of the General Assembly	1 ea.
Legislative Services Officer	1
Legislative Library	6
Members of the Council of State	2 ea.
Appointed Secretaries of Executive Departments	2 ea.
Personnel of the Department of the Secretary of State	1 ea.
State Board of Elections	2
Divisions of Archives and History, Director	1
Search Room	3

Publications Section	2
State Library	10
Libraries within State Agencies	1 ea.
Justices of the North Carolina Supreme Court	1 ea.
Judges of the North Carolina Court of Appeals	1 ea.
Judges of the North Carolina Superior Court	1 ea.
Supreme Court Library	12
Court of Appeals Library	2
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Reporter of the Supreme Court and Court of Appeals	1
Administrative Office of the Courts	5
NORTH CAROLINA EDUCATIONAL INSTITUTIONS:	
University of North Carolina System	
General Administration Offices	12
Chancellors of the Constituent Institutions	1 ea.
University of North Carolina — Chapel Hill Library	15
North Carolina State University Library	5
East Carolina University Library	5
North Carolina Central University Library	5
Appalachian State University Library	4
University of North Carolina — Charlotte Library	4
University of North Carolina — Greensboro Library	4
Western Carolina University Library	4
Other Constituent Institutions Libraries	3 ea.
North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts"	2
University of North Carolina Chapel Hill School of Government	2
Community Colleges and Technical Institutes	2 ea.
Private Colleges and Universities	
Duke University Library	6
Wake Forest University	6
Campbell University Library	5
Davidson College Library	4
All other Libraries of Senior and Junior Colleges	2 ea.
Public and Private Schools containing grades 8-12	1 ea.
COUNTY GOVERNMENT:	
Clerks of Court	1 ea.
Registers of Deeds	1 ea.
Public Libraries of North Carolina	1 ea.
FEDERAL GOVERNMENT:	
President of the United States	1
North Carolina Members of the Presidential Cabinet	1 ea.
North Carolina Members of the United States Congress	2 ea.
Library of Congress	3
Resident Judges of the Federal Judiciary and United States Attorneys in North Carolina	1 ea.
Secretaries of State of the United States and Territories	1 ea.

After making the above distribution, the remainder shall be sold at the cost of publication plus tax and postage and the proceeds from such sales deposited with the State Treasurer for use by the Publications Division of the Secretary of State's Office to defray the expense of publishing the North Carolina Manual. Libraries and educational institutions not covered in the above distribution shall be entitled to a twenty percent (20%) discount on the cost of any purchase(s). (1933, c. 115, s. 2; 1977, c. 378; 1995, c. 509, s. 101; 2001-424, s. 14F.1; 2006-264, s. 29(p); 2008-192, s. 10.)

Effect of Amendments. — Session Laws 2008-192, s. 10, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" following "North Carolina School of the Arts" on the list of state agencies, individuals, institutions eligible to receive the "North Carolina Manual."

ARTICLE 5A.

Auditor.

§ 147-64.6. Duties and responsibilities.

(a) It is the policy of the General Assembly to provide for the auditing of State agencies by the impartial, independent State Auditor.

(b) The duties of the Auditor are independently to examine into and make findings of fact on whether State agencies:

(1) Have established adequate operating and administrative procedures and practices; systems of accounting, reporting and auditing; and other necessary elements of legislative or management control.

(2) Are providing financial and other reports which disclose fairly, consistently, fully, and promptly all information needed to show the nature and scope of programs and activities and have established bases for evaluating the results of such programs and operations.

(3) Are promptly collecting, depositing, and properly accounting for all revenues and receipts arising from their activities.

(4) Are conducting programs and activities and expending funds made available in a faithful, efficient, and economical manner in compliance with and in furtherance of applicable laws and regulations of the State, and, if applicable, federal law and regulation.

(5) Are determining that the authorized activities or programs effectively serve the intent and purpose of the General Assembly and, if applicable, federal law and regulation.

(c) The Auditor shall be responsible for the following acts and activities:

(1) Audits made or caused to be made by the Auditor shall be conducted in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the United States General Accounting Office, or other professionally recognized accounting standards-setting bodies.

(2) Financial and compliance audits may be made at the discretion of the Auditor without advance notice to the organization being audited. Audits of economy and efficiency and program results shall be discussed in advance with the prospective auditee unless an unannounced visit is essential to the audit.

(3) The Auditor, on his own initiative and as often as he deems necessary, or as requested by the Governor or the General Assembly, shall, to the extent deemed practicable and consistent with his overall responsibility as contained in this act, make or cause to be made audits of all or any part of the activities of the State agencies.

(4) The Auditor, at his own discretion, may, in selecting audit areas and in evaluating current audit activity, consider and utilize, in whole or in part, the relevant audit coverage and applicable reports of the audit staffs of the various State agencies, independent contractors, and federal agencies. He shall coordinate, to the extent deemed practicable, the auditing conducted within the State to meet the needs of all governmental bodies.

(5) The Auditor is authorized to contract with federal audit agencies, or any governmental agency, on a cost reimbursable basis, for the

Auditor to perform audits of federal grants and programs administered by the State Departments and institutions in accordance with agreements negotiated between the Auditor and the contracting federal audit agencies or any governmental agency. In instances where the grantee State agency shall subgrant these federal funds to local governments, regional councils of government and other local groups or private or semiprivate institutions or agencies, the Auditor shall have the authority to examine the books and records of these subgrantees to the extent necessary to determine eligibility and proper use in accordance with State and federal laws and regulations.

The Auditor shall charge and collect from the contracting federal audit agencies, or any governmental agencies, the actual cost of all the audits of the grants and programs contracted by him to do. Amounts collected under these arrangements shall be deposited in the State Treasury and be budgeted in the Department of State Auditor and shall be available to hire sufficient personnel to perform these contracted audits and to pay for related travel, supplies and other necessary expenses.

(6) The Auditor is authorized and directed in his reports of audits or reports of special investigations to make any comments, suggestions, or recommendations he deems appropriate concerning any aspect of such agency's activities and operations.

(7) The Auditor shall charge and collect from each examining and licensing board the actual cost of each audit of such board. Costs collected under this subdivision shall be based on the actual expense incurred by the Auditor's office in making such audit and the affected agency shall be entitled to an itemized statement of such costs. Amounts collected under this subdivision shall be deposited into the general fund as nontax revenue.

(8) The Auditor shall examine as often as may be deemed necessary the accounts kept by the Treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, report the same forthwith in writing to the General Assembly, with copy of such report to the Governor and Attorney General. In addition to regular audits, the Auditor shall check the treasury records at the time a Treasurer assumes office (not to succeed himself), and therein charge him with the balance in the treasury, and shall check the Treasurer's records at the time he leaves office to determine that the accounts are in order.

(9) The Auditor may examine the accounts and records of any bank or financial institution relating to transactions with the State Treasurer, or with any State agency, or he may require banks doing business with the State to furnish him information relating to transactions with the State or State agencies.

(10) The Auditor may, as often as he deems advisable, conduct a detailed review of the bookkeeping and accounting systems in use in the various State agencies which are supported partially or entirely from State funds. Such examinations will be for the purpose of evaluating the adequacy of systems in use by these agencies and institutions. In instances where the Auditor determines that existing systems are outmoded, inefficient, or otherwise inadequate, he shall recommend changes to the State Controller. The State Controller shall prescribe and supervise the installation of such changes, as provided in G.S. 143B-426.39(2).

(11) The Auditor shall, through appropriate tests, satisfy himself concerning the propriety of the data presented in the Comprehensive Annual

Financial Report and shall express the appropriate auditor's opinion in accordance with generally accepted auditing standards.

(12) The Auditor shall provide a report to the Governor and Attorney General, and other appropriate officials, of such facts as are in his possession which pertain to the apparent violation of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee.

(13) At the conclusion of an audit, the Auditor or his designated representative shall discuss the audit with the official whose office is subject to audit and submit necessary underlying facts developed for all findings and recommendations which may be included in the audit report. On audits of economy and efficiency and program results, the auditee's written response shall be included in the final report if received within 30 days from receipt of the draft report.

(14) The Auditor shall notify the General Assembly, the Governor, the Chief Executive Officer of each agency audited, and other persons as the Auditor deems appropriate that an audit report has been published, its subject and title, and the locations, including State libraries, at which the report is available. The Auditor shall then distribute copies of the report only to those who request a report. The copies shall be in written or electronic form, as requested. He shall also file a copy of the audit report in the Auditor's office, which will be a permanent public record; Provided, nothing in this subsection shall be construed as authorizing or permitting the publication of information whose disclosure is otherwise prohibited by law.

(15) It is not the intent of the audit function, nor shall it be so construed, to infringe upon or deprive the General Assembly and the executive or judicial branches of State government of any rights, powers, or duties vested in or imposed upon them by statute or the Constitution.

(16) The Auditor shall be responsible for receiving reports of allegations of the improper governmental activities as provided in G.S. 147-64.6B. The Auditor shall adopt policies and procedures necessary to provide for the investigation or referral of these allegations.

(17) The Auditor or the Auditor's designee, in conjunction with the State Controller and the State Budget Officer or their designees, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information technology services from the Office.

(18) The Auditor shall, after consultation and in coordination with the State Chief Information Officer, assess, confirm, and report on the security practices of information technology systems. If an agency has adopted standards pursuant to G.S. 147-33.111(a), the audit shall be in accordance with those standards. The Auditor's assessment of information security practices shall include an assessment of network vulnerability. The Auditor may conduct network penetration or any similar procedure as the Auditor may deem necessary. The Auditor may enter into a contract with a State agency under G.S. 147-33.111(c) for an assessment of network vulnerability, including network penetration or any similar procedure. Any contract with the Auditor for the assessment and testing shall be on a cost-reimbursement basis. The Auditor may investigate reported information technology security breaches, cyber attacks, and cyber fraud in State government. The Auditor shall issue public reports on the general results of the reviews undertaken pursuant to this subdivision but may provide agencies with detailed reports of the security issues identified pursuant to this subdivision which shall not be disclosed as

provided in G.S. 132-6.1(c). The Auditor shall provide the State Chief Information Officer with detailed reports of the security issues identified pursuant to this subdivision. For the purposes of this subdivision only, the Auditor is exempt from the provisions of Article 3 of Chapter 143 of the General Statutes in retaining contractors.

(19) Whenever the Auditor believes that information received or collected by the Auditor may be evidence of a violation of any of the provisions of Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, or Article 14 of Chapter 120 of the General Statutes, the Auditor shall report that information to the State Ethics Commission and the Secretary of State as appropriate. The Auditor shall be bound by interpretations issued by the State Ethics Commission as to whether or not any information reported by the Auditor under this subdivision involves or may involve a violation of Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, or Article 14 of Chapter 120 of the General Statutes. Nothing in this subdivision shall be construed to limit the Auditor's authority under subdivision (1) of this subsection.

(d) Reports and Work Papers. — The Auditor shall maintain for 10 years a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under the Auditor's authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of the Auditor's office shall be retained according to an agreement between the Auditor and State Archives. To promote intergovernmental cooperation and avoid unnecessary duplication of audit effort, and notwithstanding the provisions of G.S. 126-24, pertinent work papers and other supportive material related to issued audit reports may be, at the discretion of the Auditor and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them, including criminal investigations.

Except as provided in this section, or upon an order issued in Wake County Superior Court upon 10 days' notice and hearing finding that access is necessary to a proper administration of justice, audit work papers and related supportive material shall be kept confidential, including any interpretations, advisory opinions, or other information or materials furnished to or by the State Ethics Commission under this section. (1983, c. 913, s. 2; 1985 (Reg. Sess., 1986), c. 1024, ss. 24, 25; 1987, c. 738, s. 62; 1989, c. 236, s. 2; 1999-188, s. 2; 2001-142, s. 2; 2001-424, ss. 9.1(a), 15.2(c); 2002-126, s. 27.2(b); 2002-159, s. 48; 2004-129, s. 46; 2008-215, ss. 1(a), 2, 3.)

Editor's Note. —
Session Laws 2008-215, s. 9, provides: "This act is effective when it becomes law [August 15, 2008] and applies to all information received or collected by the State Auditor concerning alleged violations of Chapters 138A or 120C of the General Statutes or Article 14 of Chapter 120 of the General Statutes on or after January 1, 2007."

Effect of Amendments. — Session Laws 2008-215, ss. 1(a), 2, and 3, effective August 15, 2008, rewrote subdivision (c)(16); added subdivision (c)(19); and in subsection (d), substituted "the Auditor's" for "his" twice, and rewrote the second paragraph. See Editor's note for applicability.

§ 147-64.6B. Reports of improper governmental activities.

(a) The Auditor shall provide various means, including a telephone hotline, electronic mail, and Internet access to receive reports of allegations of improper governmental activities. The Auditor shall periodically publicize the hotline telephone number, electronic mail address, Internet Web site address, and any other means by which the Auditor may receive reports of allegations of improper governmental activities. Individuals who make a report under this section may choose to remain anonymous until the individual affirmatively consents to having his or her identity disclosed.

(b) The Auditor shall investigate reports of allegations of improper governmental activities of State agencies and State employees within the scope of authority set forth in G.S. 147-64.6, including misappropriation, mismanagement, or waste of State resources, fraud, violations of State or federal law, rule or regulation by State agencies or State employees administering State or federal programs, and substantial and specific danger to the public health and safety. When the allegation involves issues of substantial and specific danger to the public health and safety, the Auditor shall notify the appropriate State agency immediately. When the Auditor believes that an allegation of improper governmental activity is outside the authority set forth in G.S. 147-64.6, the Auditor shall refer the allegation to the appropriate State agency responsible for the enforcement or administration of the matter for investigation. When the Auditor believes that an allegation of improper governmental activity involves matters set forth in subdivisions (1), (2), or (3) of this subsection, those matters shall be referred as follows:

(1) Allegations of criminal misconduct to either the State Bureau of Investigation or the District Attorney for the county where the alleged misconduct occurred.

(2) Allegations of violations of Chapter 138A, Chapter 120C, and Article 14 of Chapter 120 of the General Statutes to the State Ethics Commission.

(3) Allegations of violations of Chapter 163 of the General Statutes to the State Board of Elections.

(c) All records maintained by the Auditor of reports of unsubstantiated allegations of improper governmental activities shall be destroyed within four years from the date the unsubstantiated allegation was received. (2008-215, s. 1(b).)

Editor's Note. — Session Laws 2008-215, s. 9, made this section effective August 15, 2008, and applicable to all information received or collected by the State Auditor concerning alleged violations of Chapters 138A or 120C of the General Statutes or Article 14 of Chapter 120 of the General Statutes on or after January 1, 2007.

ARTICLE 6.

Treasurer.

§ 147-68. To receive and disburse moneys; to make reports.

Cross References. — As to Sexual Assault and Rape Crisis Center Fund, see G.S. 143B-394.21.

§ 147-69.2. Investments authorized for special funds held by State Treasurer.

(a) This section applies to funds held by the State Treasurer to the credit of each of the following:

(1) The Teachers' and State Employees' Retirement System.

(2) The Consolidated Judicial Retirement System.

(3) The Teachers' and State Employees' Hospital and Medical Insurance Plan.
(4) The General Assembly Medical and Hospital Care Plan.
(5) The Disability Salary Continuation Plan.
(6) The Firemen's and Rescue Workers' Pension Fund.
(7) The Local Governmental Employees' Retirement System.
(8) The Legislative Retirement System.
(9) The Escheat Fund.
(10) The Legislative Retirement Fund.
(11) The State Education Assistance Authority.
(12) The State Property Fire Insurance Fund.
(13) The Stock Workers' Compensation Fund.
(14) The Mutual Workers' Compensation Fund.
(15) The Public School Insurance Fund.
(16) The Liability Insurance Trust Fund.
(16a) The University of North Carolina Hospitals at Chapel Hill funds, except appropriated funds, deposited with the State Treasurer pursuant to G.S. 116-37.2.
(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1.
(17a) North Carolina Veterans Home Trust Fund.
(17b) North Carolina National Guard Pension Fund.
(17c) Retiree Health Premium Reserve Account.
(17d) The Election Fund.
(17e) The North Carolina State Lottery Fund.
(17f) Funds deposited with the State Treasurer by public hospitals pursuant to G.S. 159-39(g).
(17g) The Local Government Other Post-Employment Benefits Fund.
(17h) The Local Government Law Enforcement Special Separation Allowance Fund.
(17i) The North Carolina Conservation Easement Endowment Fund.
(17j) The Conservation Grant Fund.
(18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.
(19) The Swain County Settlement Trust Fund.

(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Any of the investments authorized by G.S. 147-69.1(c)(1)-(7).
(2) General obligations of other states of the United States.
(3) General obligations of cities, counties and special districts in North Carolina.
(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or outside the United States if the obligations bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which rates the particular security.
(5) Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.
(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the four highest by any nationally recognized rating service that rates the particular securities.

(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts that provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common, or collective trust funds of banks and trust companies, (iv) real estate investment trusts, and (v) limited partnerships, whether described as limited liability partnerships or limited liability companies; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located within or outside the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the market value of all invested assets of the Retirement Systems.

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems), and assets invested pursuant to subdivision (b2) of this section, they may be invested in preferred or common stocks issued by any company incorporated or otherwise created or located within or outside the United States provided the investments meet the conditions of this subdivision.

The investments authorized for the Retirement Systems under this subdivision cannot exceed sixty-five percent (65%) of the market value of all invested assets of the Retirement Systems. Up to five percent (5%) of the amount that may be invested under this subdivision may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" that has total assets of at least fifty million dollars ($50,000,000).

The assets authorized under this subdivision can be invested through individual, common, or collective trust funds of banks, trust companies, and group trust funds of investment advisory companies so long as the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

The assets authorized under this subdivision can also be invested directly, if all of the following conditions are met:

a. The common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system.

b. The corporation has paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of the corporation for the whole of that period have been at least equal to the amount of the dividends paid.

c. In applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, if the corporation acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this subdivision have been complied with.

No more than one and one-half percent (1 1/2%) of the market value of the Retirement Systems' assets that may be invested under this subdivision can be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed eight percent (8%) of the issued and outstanding stock of that corporation.

d. to f. Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

g. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in limited partnership interests in a partnership or in interests in a limited liability company if the primary purpose of the partnership or limited liability company is to invest in public or private debt, public or private equity, or corporate buyout transactions, within or outside the United States. The amount invested under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.

(10) Recodified as part of subdivision (b)(9) by Session Laws 2000-160, s. 2.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than October 1, 2009. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision.

(12) With respect to assets of the Escheat Fund, in addition to those investments authorized by subdivisions (1) through (6) of this subsection, up to twenty percent (20%) in the investments authorized under subdivisions (7) through (9) of this subsection, notwithstanding the limitations imposed on the retirement funds under those subdivisions.

(b1) With respect to investments authorized by subsections (b)(8) and (b)(9) of this section, the State Treasurer shall appoint an Investment Advisory Committee, which shall consist of five members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The two public members must have experience in one or more of the following areas: investment management, real estate investment trusts, real estate development, venture capital investment, or absolute return strategies. The State Treasurer shall also appoint a Secretary of the Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1.

(b2) The State Treasurer may invest funds deposited pursuant to subdivision (a)(17f) of this section in any of the investments authorized under subdivisions (1) through (6) and subdivision (8) of subsection (b) of this section. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars ($100,000), and may assess a reasonable fee, not to exceed 15 basis points, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection by a hospital shall remain the funds of that hospital, and interest or other investment income earned thereon shall be prorated and credited to the contributing hospital on the basis of the amounts thereof contributed, figured according to sound accounting principles.

(b3) The State Treasurer may invest funds deposited pursuant to subdivision (a)(16a) of this section in any of the investments authorized under subdivisions (1) through (6) and subdivision (8) of subsection (b) of this section. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars ($100,000), and may assess a reasonable fee, not to exceed 15 basis points, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection by the University of North Carolina Hospitals at Chapel Hill shall remain the funds of the University of North Carolina Hospitals at Chapel Hill, and interest or other investment income earned thereon shall be prorated and credited to the University of North Carolina Hospitals at Chapel Hill on the basis of the amounts thereof contributed, figured according to sound accounting principles.

(b4) In addition to the investments authorized under subdivisions(b)(1) through (b)(6) of this section, the State Treasurer may invest funds deposited in the Local Government Other Post-Employment Benefits Fund in the investments authorized under subdivision (b)(8) of this section. For investments from that Fund made under subdivision (b)(8) of this section, the State Treasurer may require a minimum deposit of up to one hundred thousand dollars ($100,000) and may assess a fee of up to 15 basis points as a condition of making the investment. The fee may be used to defray the costs of administering the Fund.

(b5) In addition to the investments authorized under subdivisions (b)(1) through (b)(6) of this section, the State Treasurer may invest funds deposited in the Local Government Law Enforcement Special Separation Allowance Fund in the investments authorized under subdivision (b)(8) of this section. For investments from that Fund made under subdivision (b)(8) of this section, the State Treasurer may require a minimum deposit of up to one hundred thousand dollars ($100,000) and may assess a fee of up to 15 basis points as a condition of making the investment. The fee may be used to defray the costs of administering the Fund.

(c) Repealed by Session Laws 1995, c. 501, s. 2.

(d) The State Treasurer may invest funds deposited pursuant to subdivision (a)(17i) of this section in any of the investments authorized under subdivisions (1) through (6) and subdivision (8) of subsection (b) of this section. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars ($100,000), and may assess a reasonable fee, not to exceed 15 basis points, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection shall remain the funds of the North Carolina Conservation Easement Endowment Fund, and interest or other investment income earned thereon shall be prorated and credited to the North Carolina Conservation Easement Endowment Fund on the basis of the amounts thereof contributed, figured according to sound accounting principles. (1979, c. 467, s. 2; 1983, c. 702, ss. 1-9; 1987, c. 446, s. 1; c. 751, s. 5; 1987 (Reg. Sess., 1988), c. 1070; 1989, c. 770, s. 54; 1989 (Reg. Sess., 1990), c. 813, s. 11; c. 848, s. 5; 1991, c. 542, s. 16; c. 636, s. 3; c. 749, s. 8; 1993 (Reg. Sess., 1994), c. 777, s. 4(i); 1995, c. 346, s. 2; c. 501, s. 2; 1997-456, s. 27; 1999-237, s. 27.16; 1999-251, s. 2; 2000-160, s. 2; 2001-444, ss. 2, 3; 2003-12, s. 2; 2004-124, s. 30.22(b); 2005-144, s. 7; 2005-201, s. 2; 2005-252, s. 1; 2005-276, s. 28.17; 2005-344, s. 10; 2005-417, s. 2; 2007-323, s. 27.7; 2007-384, ss. 2, 3, 7, 8; 2008-13, s. 2; 2008-107, ss. 12.9(b), (c), 12.13.)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-13, s. 2, effective June 25, 2008, added subdivision (a)(19).

Session Laws 2008-107, ss. 12.9(b), (c), and 12.13, effective July 1, 2008, added subdivisions (a)(17i) and (a)(17j) and subsection (d).

§ 147-69.3. Administration of State Treasurer's investment programs.

(a) The State Treasurer shall establish, maintain, administer, manage, and operate within the Department of State Treasurer one or more investment programs for the deposit and investment of assets pursuant to the provisions of G.S. 147-69.1 and G.S. 147-69.2.

(b) Any official, board, commission, other public authority, local government, school administrative unit, local ABC board, or community college of the State having custody of any funds not required by law to be deposited with and invested by the State Treasurer may deposit all or any portion of those funds with the State Treasurer for investment in one of the investment programs established pursuant to this section, subject to any provisions of law with respect to eligible investments, provided that any occupational licensing board as defined in G.S. 93B-1 may participate in one of the investment programs established pursuant to this section regardless of whether or not the funds were required by law to be deposited with and invested by the State Treasurer. In the absence of specific statutory provisions to the contrary, any of those funds may be invested in accordance with the provisions of G.S. 147-69.2 and 147-69.3. Upon request from any depositor eligible under this subsection, the State Treasurer may authorize moneys invested pursuant to this subsection to be withdrawn by warrant on the State Treasurer.

(c) The State Treasurer's investment programs shall be so managed that in the judgment of the State Treasurer funds may be readily converted into cash when needed.

(d) Except as provided by G.S. 147-69.1(d), the total return earned on investments shall accrue pro rata to the fund whose assets are invested according to the formula prescribed by the State Treasurer with the approval of the Governor and Council of State.

(e) The State Treasurer has full powers as a fiduciary to hold, purchase, sell, assign, transfer, lend and dispose of any of the securities or investments in which any of the programs created pursuant to this section have been invested, and may reinvest the proceeds from the sale of those securities or investments and any other investable assets of the program.

(f) The cost of administration, management, and operation of investment programs established pursuant to this section shall be apportioned equitably among the programs in such manner as may be prescribed by the State Treasurer, such costs to be paid from each program, and to the extent not otherwise chargeable directly to the income or assets of the specific investment program or pooled investment vehicle, shall be deposited with the State Treasurer as a General Fund nontax revenue. The cost of administration, management, and operation of investment programs established pursuant to this section and not directly paid from the income or assets of such program shall be covered by an appropriation to the State Treasurer for this purpose in the Current Operations Appropriations Act.

(g) The State Treasurer is authorized to retain the services of independent appraisers, auditors, actuaries, attorneys, investment counseling firms, statisticians, custodians, or other persons or firms possessing specialized skills or knowledge necessary for the proper administration of investment programs created pursuant to this section.

(h) The State Treasurer shall prepare, as of the end of each fiscal year, a report on the financial condition of each investment program created pursuant to this section. A copy of each report shall be submitted within 30 days following the end of the fiscal year to the official, institution, board, commission or other agency whose funds are invested, the State Auditor, and the chairs of the Finance Committees of the House of Representatives and the Senate.

(i) The State Treasurer shall report at least twice a year to the General Assembly, through the Finance Committees of the House of Representatives and the Senate, on the investment programs created under this section. The Treasurer shall present the reports to a joint meeting of the Finance Committees. The chairs of the Finance Committees may receive the reports and call the meetings. The Finance Committees may meet during the interim as necessary to hear the reports from the State Treasurer. The State Treasurer's report and presentation to the Finance Committees shall include all of the following:

(1) A full and complete statement of all moneys invested by virtue of the provisions of G.S. 147-69.1 and G.S. 147-69.2.
(2) The nature and character of the investments.
(3) The revenues derived from the investments.
(4) The costs of administering, managing, and operating the investment programs, including the recapture of any investment commissions.
(5) A statement of the investment policies for the revenues invested.
(6) Any other information that may be helpful in understanding the State Treasurer's investment policies and investment results.
(7) Any other information requested by the Finance Committees.

(i1) The State Treasurer shall report the incentive bonus paid to the Chief Investment Officer to the Joint Legislative Commission on Governmental Operations by October 1 of each year.

(i2) In order to retain key public employees in the Investment Division, the State Treasurer is authorized to establish compensation including bonuses for the Chief Investment Officer and Investment Directors. The bonuses may be based on compensation studies conducted by a nationally recognized firm specializing in public fund investment compensation and the Pension Plan performance. The salaries and other associated benefits shall be apportioned directly from the investment program. The Treasurer shall report the bonuses paid to the Joint Legislative Commission on Governmental Operations annually.

(j) Subject to the provisions of G.S. 147-69.1(d), the State Treasurer shall adopt any rules necessary to carry out the provisions of this section. (1979, c.

467, s. 3; 1981, c. 445, ss. 4, 5; 1983, c. 515, s. 1; c. 702, s. 10; 1983 (Reg. Sess., 1984), c. 1034, ss. 116, 117; 1987, c. 751, ss. 6-8; 2001-444, s. 4; 2002-126, s. 6.12; 2005-276, s. 27.3; 2006-203, s. 119; 2008-132, s. 5.)

Editor's Note. —

Session Laws 2008-132, s. 5, effective July 1, 2008, was codified as subsection (i2) of this section at the direction of the Revisor of Statutes.

§ 147-69.6. Swain County Settlement Trust Fund.

(a) The Swain County Settlement Trust Fund is established as a special fund in the Office of the State Treasurer under the management of the Treasurer. The Fund shall consist of the proceeds of any payments made by the United States in settlement of the 1943 agreement between Swain County and the United States Department of Interior, such other contributions as Swain County or other entities may choose to make to the Fund, and the interest and other investment income earned by the Fund. Contributions to the Fund are irrevocable. Assets in the Fund may be disbursed only to Swain County.

(b) On such schedule as the State Treasurer may determine, in consultation with the Board of Commissioners of Swain County, the State Treasurer shall disburse to Swain County amounts requested by the Swain County Board of Commissioners pursuant to a majority vote of that body, provided that disbursements to Swain County under this subsection in any fiscal year shall not exceed the total interest and investment income earned by the Fund in that fiscal year. At the start of each fiscal year, the State Treasurer shall issue a nonbinding opinion and recommendation to the Swain County Board of Commissioners suggesting an appropriate amount of interest and investment income to be reinvested in the Fund to ensure that the principal investment grows to keep pace with inflation.

(c) No portion of the principal balance of the Fund may be disbursed to Swain County absent a request by the Swain County Board of Commissioners accompanied by a certification by the Swain County Board of Elections that two-thirds of the registered voters of Swain County voted in favor of the disbursement and subsequent expenditure of the amount requested in a referendum conducted under subsection (f) of this section.

(d) Funds disbursed to Swain County under subsections (b) or (c) of this section shall be managed by the county in accordance with the requirements of the Local Government Budget and Fiscal Control Act as amended from time to time.

(e) No part of the principal of the Swain County Settlement Trust Fund or of any interest or other income earned on that principal may be paid to or received by any agent or attorney on account of services rendered in connection with negotiating the settlement agreement between Swain County and the United States Department of Interior or obtaining the monetary settlement from the United States.

(f) The Board of Commissioners of Swain County may direct the Swain County Board of Elections to conduct an advisory referendum on the question of whether any portion of the principal of the Fund should be disbursed to and expended by the county for a particular purpose. The election shall be held on a date jointly agreed upon by the two boards, which may be the same day as any other referendum or election in the county, but may not otherwise be during the period beginning 30 days before and ending 30 days after the day of any other referendum or election to be conducted by the board of elections and already validly called or scheduled by law. The election shall be held in accordance with the procedures of G.S. 163-287. The question to be presented on the ballot shall disclose the specific purpose proposed for expenditure of the principal investment of the Trust Fund and the amount proposed for expenditure.

(g) The Swain County Settlement Trust Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(h) The Swain County Settlement Trust Fund and the income therefrom shall not take the place of or be counted against any other State appropriations or program providing funds or disbursements to Swain County. (2008-13, s. 3.)

Editor's Note. — Session Laws 2008-13, s. 4, made this section effective June 25, 2008.

Session Laws 2008-13, s. 1, provides: "Legislative Findings. — It is hereby determined and declared as a matter of legislative finding that:

"(1) Flooding caused by the construction of Fontana Dam destroyed a road that had been constructed with road bonds which had been assumed by Swain County.

"(2) The United States Department of Interior and the Tennessee Valley Authority entered into an agreement in 1943 with Swain County and the State of North Carolina to compensate Swain County for this loss by, among other obligations, constructing a new road, which would traverse the Great Smoky Mountains National Park.

"(3) The promised road has not been built. Early attempts to construct the road were abandoned by the National Park Service because of the expense involved and concerns about environmental impacts.

"(4) In 2007, the National Park Service concluded, after completing a full environmental impact statement of the road proposal, that construction of the road would have unacceptable impacts to the natural environment in the Great Smoky Mountains National Park. The National Park Service instead has endorsed an alternative proposal, also supported by Swain County, to negotiate a monetary settlement of the United States' unfulfilled obligations under its 1943 agreement with Swain County.

"(5) The proposed monetary settlement of the 1943 agreement between Swain County and the United States Department of Interior is an unprecedented opportunity to provide for the future prosperity of the people of Swain County.

"(6) Appropriate fiscal management of this significant monetary settlement requires authority and programs not currently provided by North Carolina law.

"(7) The Swain County Board of Commissioners has by resolution announced its desire and intention that the proceeds of any monetary settlement with the United States be managed for the long-term prosperity of the people of Swain County.

"(8) The Swain County Board of Commissioners has by resolution announced its desire and intention that the proceeds of a monetary settlement with the United States Department of Interior be preserved and insulated from improvident expenditure."

Article 6A.

Cash Management.

§ 147-86.11. Cash management for the State.

Editor's Note. —

Session Laws 2008-107, s. 6.11, provides: "(a) Notwithstanding the cash management provisions of G.S. 147-86.11, the Office of Information Technology Services (ITS) may procure information technology goods and services for periods not exceeding three years where the terms require payment of all or a portion of the purchase price at the beginning of the agreement. All of the following conditions must be met before payment for these agreements may be disbursed:

"(1) Any advance payment complies with the ITS budget.

"(2) The State Controller receives conclusive evidence that the proposed agreement would be more cost-effective than a multiyear agreement that complies with G.S. 147-86.11.

"(3) The procurement complies in all other respects with applicable statutes and rules.

"(4) The proposed agreement contains contract terms that protect the financial interests of the State against contractor nonperformance or insolvency through the creation of escrow accounts for funds, source codes, or both, or by other reasonable means that have legally binding effect."

"(b) The Office of State Budget and Management (OSBM) shall ensure that the savings from any authorized agreement will be included in the ITS calculation of rates before OSBM annually approves the proposed rates.

"(c) The Office of Information Technology Services shall report to the Office of State Budget and Management on any State agency budget impacts resulting from the multiyear contracts.

"(d) By January 1, 2009, then quarterly thereafter, the Office of Information Technology Services shall submit a written report of any authorizations granted under this section to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 6C.

Health and Wellness Trust Fund.

§ 147-86.30. Health and Wellness Trust Fund established.

(a) Fund Established. — There is established the Health and Wellness Trust Fund in the Office of the State Treasurer to be used to develop a comprehensive plan to finance programs and initiatives to improve the health and wellness of the people of North Carolina. As used in this Article, the term "Fund" means the Health and Wellness Trust Fund. It is the intent of the General Assembly that the funds provided pursuant to this Article to address the health needs of North Carolinians be used to supplement, not supplant, existing funding of health and wellness programs.

(b) Fund Earnings, Assets, and Balances. — The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Fund and shall invest its assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the chair of the Commission, pursuant to directives of the Commission. The Commission may expend moneys in the Fund only as provided in subsections (c) and (d) of this section.

(c) Priority Use of Funds. — As soon as practicable after the beginning of each fiscal year, the State Treasurer must certify in writing to the chair of the Commission the estimated amount of debt service anticipated to be paid during the fiscal year for special indebtedness authorized by the State Capital Facilities Act of 2004, Part 1 of S.L. 2004-124. The chair of the Commission must issue a warrant from the Fund to the General Fund for the lesser of (i) one-half of the amount certified by the Treasurer and (ii) the applicable percentage of the Fund's receipts for the current fiscal year. For fiscal years beginning before July 1, 2007, the applicable percentage is thirty percent (30%). For fiscal years beginning on or after July 1, 2007, the applicable percentage is sixty-five percent (65%).

(d) Use of Remaining Funds. — The Commission may expend or commit moneys in the Fund in a fiscal year only after the payment required by subsection (c) of this section has been made.

(e) Fund Purposes. — Moneys from the Fund may be used for any of the following purposes:

(1) To address the health needs of vulnerable and underserved populations in North Carolina.

(2) To fund programs and initiatives that include research, education, prevention, and treatment of health problems in North Carolina and

to increase the capacity of communities to respond to the public's health needs.

(3) To develop a comprehensive, community-based plan with goals and objectives to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and with an emphasis on reducing youth tobacco use. The plan shall include measurable health and wellness objectives and a proposed timetable for achieving these objectives. In developing the plan, the Commission shall consider all facets of health, including prevention, education, treatment, research, and related areas.

(f) Limit on Operating and Administrative Expenses. — No more than two and one-half percent (2 1/2%) of the annual receipts of the Fund for the fiscal year beginning July 1 or a total of one million dollars ($1,000,000), whichever is less, may be used each fiscal year for administrative and operating expenses of the Commission and its staff. All administrative expenses of the Commission shall be paid from the Fund. (2000-147, s. 2; 2004-179, s. 1.3; 2006-203, s. 122; 2008-187, s. 28.)

Effect of Amendments. — Session Laws 2008-187, s. 28, effective August 7, 2008, deleted the second paragraph of subsection (c), which read: "G.S. 143C-9-3."

§ 147-86.32. Health and Wellness Trust Fund; Commission established; membership qualifications; vacancies.

Cross References. — For policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events, see G.S. 115D-20.1.

§ 147-86.33. Health and Wellness Trust Fund; powers and duties.

Cross References. — For policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events, see G.S. 115D-20.1.

Chapter 148.

State Prison System.

Article 1.

Organization and Management.

Sec.
148-4.1. Release of inmates.

Article 4.

Paroles.

148-64.1. Early conditional release of inmates subject to a removal order; revocation of release.

Article 4B.

Interstate Compact for Adult Offender Supervision.

148-65.4. Short title.
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Article 8.

Compensation to Persons Erroneously Convicted of Felonies.

148-84. Evidence; action by Industrial Commission; payment and amount of compensation.

ARTICLE 1.

Organization and Management.

§ 148-4.1. Release of inmates.

(a) Whenever the Secretary of Correction determines from data compiled by the Department of Correction that it is necessary to reduce the prison population to a more manageable level or to meet the State's obligations under law, he shall direct the Post-Release Supervision and Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose. From the time the Secretary directs the Post-Release Supervision and Parole Commission until the prison population has been reduced to a more manageable level, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred. In order to meet the requirements of this section, the Parole Commission shall not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under G.S. 14-17, or any other violent felon as defined in subsection (a1) of this section. The Parole Commission may continue to consider the suitability for release of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter 15A.

(a1) Notwithstanding any other provision of this section, the Department of Correction shall at all times secure the necessary prison space to house any violent felon or habitual felon for the full active sentence imposed by the court. For purposes of this subsection, the term "violent felon" means any person convicted of the following felony offenses: first or second degree murder, voluntary manslaughter, first or second degree rape, first or second degree sexual offense, any sexual offense involving a minor, robbery, kidnapping, or assault, or attempting, soliciting, or conspiring to commit any of those offenses.

(b) Except as provided in subsection (c), only inmates who are otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article 3B of this Chapter may be released under this section.

(c) Persons eligible for parole under Article 85A of Chapter 15A shall be eligible for early parole under this section nine months prior to the discharge date otherwise applicable, and six months prior to the date of automatic 90-day parole authorized by G.S. 15A-1380.2.

(c1) through (g). Repealed by 1995 Session Laws, c. 324, s. 19.9(e).

(g1) Expired July 1, 1996.

(h) A person sentenced under Article 81B of Chapter 15A of the General Statutes shall not be released pursuant to this section.

(i) This section does not apply to inmates released pursuant to G.S. 148-64.1. (1983, c. 557, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 197(a); 1987, c. 7, ss. 1, 3, 4; c. 879, s. 1.2; 1989, c. 1, s. 1; 1990, Ex. Sess., c. 1, ss. 1-3.3; 1989 (Reg. Sess., 1990), c. 933, ss. 10-13; 1991, c. 187, s. 2; c. 217, ss. 6, 7; c. 437, ss. 1-9; 1991 (Reg. Sess., 1992), c. 1036, ss. 5-7; 1993, c. 91, ss. 1-9; c. 538, s. 31; 1994, Ex. Sess., c. 14, s. 64; c. 15, ss. 1-4; c. 24, s. 14(b), (e); 1995, c. 324, s. 19.9(a)-(e); 2008-199, s. 1.)

Effect of Amendments. — Session Laws 2008-199, s. 1, effective August 8, 2008, added subsection (i).

ARTICLE 4.

Paroles.

§ 148-64.1. Early conditional release of inmates subject to a removal order; revocation of release.

(a) Eligibility for Early Release. — Notwithstanding any other provision of law, the Post-Release Supervision and Parole Commission may conditionally release an inmate into the custody and control of United States Immigration and Customs Enforcement if all of the following requirements are satisfied:

- (1) The Department of Correction has received a final order of removal for the inmate from United States Immigration and Customs Enforcement.
- (2) The inmate was convicted of a nonviolent criminal offense and is incarcerated for that offense. If the inmate was convicted of and is incarcerated for more than one offense, then all of the offenses of which the inmate was convicted and is incarcerated must be nonviolent criminal offenses. As used in this subdivision, the term "nonviolent criminal offense" means a conviction for an impaired driving offense or a felony violation of any of the following:
  - a. G.S. 14-54.
  - b. G.S. 14-56.
  - c. G.S. 14-71.1.
  - d. G.S. 14-100, where the thing of value is less than one hundred thousand dollars ($100,000).
  - e. G.S. 90-95(d)(4).
- (3) The inmate has served at least half of the minimum sentence imposed by the court or, in the case of an inmate convicted of an impaired driving offense under G.S. 20-138.1, the inmate has met all of the parole eligibility requirements under G.S. 15A-1371, notwithstanding G.S. 20-179(p)(3).

(4) The inmate was not convicted of an impaired driving offense resulting in death or serious bodily injury, as that term is defined in G.S. 14-32.4.

(5) The inmate agrees not to reenter the United States unlawfully.

(b) Release Is Discretionary. — The decision to release an inmate once the requirements of subsection (a) of this section are satisfied is in the sole, unappealable discretion of the Post-Release Supervision and Parole Commission.

(c) Return of Inmates. — In the event that the United States Immigration and Customs Enforcement is unable to or does not deport the inmate, the inmate shall be returned to the custody of the Department of Correction to serve the remainder of the original sentence.

(d) Unlawful Reentry Constitutes Violation. — An inmate released pursuant to this section who returns unlawfully and willfully to the United States violates the conditions of the inmate's early release.

(e) Arrest Authority. — An inmate who violates the conditions of the inmate's early release is subject to arrest by a law enforcement officer.

(f) Effect of Violation. — Upon notification from any federal or state law enforcement agency that the inmate is in custody, and after notice and opportunity to be heard, the Post-Release Supervision and Parole Commission shall revoke the inmate's release and reimprison the inmate for a period equal to the inmate's maximum sentence minus time already served by the inmate upon a finding that an inmate has violated the conditions of the inmate's early release.

(g) Violators Ineligible for Future Release. — Upon revocation of release under this subsection, the inmate shall not be eligible for any future release under this section or for any other release from confinement, other than post-release supervision, until the remainder of the sentence of imprisonment is served. (2008-199, s. 3.)

Editor's Note. — Session Laws 2008-199, s. 4, made this section effective August 8, 2008.

Subsections (c), (d), (e), (f), and (g), were enacted by Session Laws 2008-199, s. 3 as subsections (b1), (c), (d), (e), and (f), respectively. They were redesignated at the direction of the Revisor of Statutes.

ARTICLE 4B.

Interstate Compact for Adult Offender Supervision.

§ 148-65.4. Short title.

This Article may be cited as "The Interstate Compact for Adult Offender Supervision. (2002-166, s. 1; 2008-189, s. 1.)

Effect of Amendments. — Session Laws 2008-189, s. 1, effective August 7, 2008, substituted "Adult Offender Supervision" for "the Supervision of Adult Offenders" in the article heading and text of section.

§ 148-65.5. Governor to execute compact; form of compact.

The Governor of North Carolina is authorized and directed to execute a compact on behalf of the State of North Carolina with any state of the United States legally joining therein in the form substantially as follows:

Preamble.

Whereas: The Interstate Compact for the Supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states, and has not been amended since its adoption over 62 years ago;

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements, and sex offender registration;

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability;

Whereas: The General Assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety. The Governor is hereby authorized and directed to enter into a compact on behalf of the State of North Carolina with any state of the United States and other territorial possessions of the United States legally joining therein in the form substantially as follows;

Whereas: Upon the adoption of this Interstate Compact for Adult Offender Supervision, it is the intention of the General Assembly to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers one year after the effective date of this compact.

Article I.
Purpose.

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states:
  (1) To provide the framework for the promotion of public safety and to protect the rights of victims through the control and regulation of the interstate movement of offenders in the community;
  (2) To provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and
  (3) To equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

(c) In addition, this compact will:
  (1) Create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults

placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, which will promulgate rules to achieve the purpose of this compact;

(2) Ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(3) Establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators;

(4) Monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and

(5) Coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provision of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of the public policies and are therefore public business.

Article II.
Definitions.

(a) As used in this compact, unless the context clearly requires a different construction:

(1) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(2) "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission's actions or conduct.

(3) "Compact Administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the state council under this compact.

(4) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(5) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(6) "Interstate Commission" means the Interstate Commission for Adult Offender Supervision established by this compact.

(7) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(8) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(9) "Offender" means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released

to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(10) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(11) "Rules" means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states.

(12) "State" means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

(13) "State council" means the resident member of the State Council for Interstate Adult Offender Supervision created by each state under Article III of this compact.

Article III.
The Compact Commission.

(a) The compacting states hereby create the "Interstate Commission for Adult Offender Supervision". The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations; such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(d) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

(e) The Interstate Commission shall establish an executive committee that shall include commission officers, members, and others as shall be determined by the bylaws. The executive committee oversees the day-to-day activities managed by the executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws, and as directed by the Interstate Commission; and performs other duties as directed by the commission or set forth in the bylaws.

Article IV.
The State Council.

(a) Each member state shall create a State Council for Interstate Adult Offender Supervision that shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the Compact Administrator, who shall be appointed by the state council or by the Governor in consultation with the legislature and the judiciary. In addition to appointment of its own commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including, but not limited to, development of policy operations and procedures of the compact within that state.

Article V.
Powers and Duties of the Interstate Commission.

The Interstate Commission shall have the following powers:

(1) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission.

(2) To promulgate rules that shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission.

(4) To enforce compliance with compact provisions, Interstate Commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(5) To establish and maintain offices.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs.

(8) To establish and appoint committees and hire staff when it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.
(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.
(13) To establish a budget and make expenditures and levy dues as provided in Article X of this compact.
(14) To sue or be sued.
(15) To provide for dispute resolution among compacting states.
(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.
(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.
(18) To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity.
(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

Article VI.

Organization and Operation of the Interstate Commission.

(a) Bylaws. — The Interstate Commission shall, by a majority of the members, within 12 months of the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:
  (1) Establishing the fiscal year of the Interstate Commission;
  (2) Establishing an executive committee and such other committees as may be necessary and providing reasonable standards and procedures:
    a. For the establishment of committees, and
    b. Governing any general or specific delegation of any authority or function of the Interstate Commission;
  (3) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;
  (4) Establishing the titles and responsibilities of the officers of the Interstate Commission;
  (5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the Interstate Commission;
  (6) Providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;
  (7) Providing transition rules for "start- up" administration of the compact; and
  (8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.
(b) Officers and Staff. — The Interstate Commission shall, by a majority of the members, elect from among its members a chair and a

vice-chair, each of whom shall have such authorities and duties as may be specified in the bylaws. The chair or, in the chair's absence or disability, the vice-chair shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, and hire and supervise such other staff as may be authorized by the Interstate Commission, but shall not be a member.

(c) Corporate Records of the Interstate Commission. — The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

(d) Qualified Immunity, Defense, and Indemnification. — The members, officers, executive director, and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

The Interstate Commission shall defend the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Article VII.
Activities of the Interstate Commission.

(a) The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the Interstate Commission shall have the right and power to cast a vote to which the compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act", U.S.C. § 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;
(2) Disclose matters specifically exempted from disclosure by statute;
(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;
(4) Involve accusing any person of a crime or formally censuring any person;
(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
(6) Disclose investigatory records compiled for law enforcement purposes;
(7) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; and

(9) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in the officer's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any recall vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

Article VIII.

Rule-making Functions of the Interstate Commission.

(a) The Interstate Commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551, et seq., and the Federal Advisory Committee Act, 5 U.S.C. § 1, et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the Interstate Commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule that is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rule- making record. Not later than 60 days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principle office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rule-making record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within 12 months after the first meeting must, at a minimum, include:

a. Notice to victims and opportunity to be heard;
b. Offender registration and compliance;
c. Violations/returns;
d. Transfer procedures and forms;
e. Eligibility for transfer;
f. Collection of restitution and fees from offenders;
g. Data collection and reporting;
h. The level of supervision to be provided by the receiving state;
i. Transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and
j. Mediation, arbitration, and dispute resolution.

(e) The existing rules governing the operation of the previous compact superceded by this Act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

(f) Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

Article IX.

Oversight, Enforcement, and Dispute Resolution by the Interstate Commission.

(a) Oversight. — The Interstate Commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states that may significantly affect compacting states.

The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute Resolution. — The compacting states shall report to the Interstate Commission on issues or activities of concern to them and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The Interstate Commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) Enforcement. — The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any and all means set forth in Article XII, subsection (b) of this compact.

Article X.
Finance.

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy on and collect an annual assessment for each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff that must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Article XI.
Compacting State, Effective Date, and Amendment.

(a) Any state, as defined in article ii of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2002, or upon enactment into law by the 35th jurisdiction. Therefore, it shall become effective and binding as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in Interstate Commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the Interstate Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XII.
Withdrawal, Default, Termination, and Judicial Enforcement.

(a) Withdrawal. — Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

The effective date of withdrawal is the effective date of the repeal. The withdrawing state shall immediately notify the Chair of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state's reenacting the compact or upon such later date as determined by the Interstate Commission.

(b) Default. — If the Interstate Commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws, or any duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(1) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;

(2) Remedial training and technical assistance as directed by the Interstate Commission;

(3) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the Governor; the Chief Justice or Chief Judicial Officer of the state; the Majority and Minority Leaders of the defaulting state's legislature; and the state council.

The grounds of default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission bylaws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the Governor; the Chief Justice or Chief Judicial Officer of the state; the Majority and Minority Leaders of the defaulting state's legislature; and the state council of such termination.

The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the

Interstate Commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial Enforcement. — The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(d) Dissolution of Compact. — The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up, and any surplus funds shall be distributed in accordance with the bylaws.

Article XIII.

Severability and Construction.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provision of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

Article XIV.

Binding Effect of Compact and Other Laws.

(a) Other Laws. — Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) Binding Effect of the Compact. — All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective. (2002-166, s. 1; 2008-189, s. 1.)

Effect of Amendments. — Session Laws 2008-189, s. 1, effective August 7, 2008, substituted "Adult Offender Supervision" for "the Supervision of Adult Offenders" in the sixth paragraph of the "Preamble."

§ 148-65.6. Implementation of the compact.

(a) The North Carolina State Council for Interstate Adult Offender Supervision shall be established, consisting of 14 members. North Carolina's Commissioner to the Interstate Compact Commission is a member of the State Council and serves as chair of the State Council. The remaining members of the State Council shall consist of the following:

(1) One member representing the executive branch, to be appointed by the Governor;
(2) One member from a victim's assistance group, to be appointed by the Governor;
(3) One at-large member, to be appointed by the Governor;
(4) One member of the Senate, to be appointed by the President Pro Tempore of the Senate;
(5) One member of the House of Representatives, to be appointed by the Speaker of the House of Representatives;
(6) A superior court judge, to be appointed by the Chief Justice of the Supreme Court;
(6a) A district court judge, to be appointed by the Chief Justice of the Supreme Court;
(7) Four members representing the Division of Community Corrections, to be appointed by the Director of the Division of Community Corrections;
(8) A district attorney, to be appointed by the Governor; and
(9) A sheriff, to be appointed by the Governor.

(a1) The Governor, in consultation with the legislature and judiciary, shall appoint the Compact Administrator. The Compact Administrator shall be appointed by the State Council as North Carolina's Commissioner to the Interstate Compact Commission.

(b) The State Council shall meet at least twice a year and may also hold special meetings at the call of the chairperson. All terms are for three years.

(c) The State Council may advise the Compact Administrator on participation in the Interstate Commission activities and administration of the compact.

(d) The members of the State Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses in accordance with the policies of the Office of State Budget and Management.

(e) The State Council shall act in an advisory capacity to the Secretary of Correction concerning this State's participation in Interstate Commission activities and other duties as may be determined by each member state, including recommendations for policy concerning the operations and procedures of the compact within this State.

(f) The Governor shall by executive order provide for any other matters necessary for implementation of the compact at the time that it becomes effective, and, except as otherwise provided for in this section, the State Council may promulgate rules or regulations necessary to implement and administer the compact. (2002-166, s. 1; 2008-189, s. 1.)

Effect of Amendments. — Session Laws 2008-189, s. 1, effective August 7, 2008, in subsection (a), substituted "14" for "11" in the first sentence, rewrote the second sentence; added subdivisions (a)(6a), (a)(8) and (a)(9); and added subsection (a1).

§ 148-65.7. Fees.

(a) Persons convicted in this State who make a request for transfer to another state pursuant to the compact shall pay a transfer application of one hundred fifty dollars ($150.00) for each transfer application submitted. The transfer application fee shall be paid to the Compact Commissioner upon submission of the transfer application. The Commissioner or the Commissioner's designee may waive the application fee if either the Commissioner or the Commissioner's designee finds that payment of the fee will constitute an undue economic burden on the offender.

All fees collected pursuant to this section shall be deposited in the Interstate Compact Fund and shall be used only to support administration of the Interstate Compact.

The Interstate Compact Fund is established within the Department of Correction as a nonreverting, interest-bearing special revenue account. Accordingly, revenue in the Fund at the end of a fiscal year does not revert, and interest and other investment income earned by the Fund shall be credited to it. All moneys collected by the Department of Correction pursuant to this subsection shall be remitted to the State Treasurer to be deposited and held in this Fund. Moneys in the Fund shall be used to supplement funds otherwise available to the Department of Correction for the administration of the Interstate Compact.

(b) Persons supervised in this State pursuant to this compact shall pay the supervision fee specified in G.S. 15A-1374(c). The fee shall be paid to the clerk of court in the county in which the person initially receives supervision services in this State. The Commissioner or the Commissioner's designee may waive the fee if either the Commissioner or the Commissioner's designee finds that payment of the fee will constitute an undue economic burden on the offender. (2002-166, s. 1; 2008-189, s. 1.)

Effect of Amendments. — Session Laws 2008-189, s. 1, effective August 7, 2008, substituted "Fees" for "Supervision fee" in the section heading; added subsection (a); designated the previously existing provisions as subsection (b), and added the third sentence in present subsection (b).

§ 148-65.8. Interstate parole and probation hearing procedures.

(a) Where supervision of an offender is being administered pursuant to the Interstate Compact for Adult Offender Supervision, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole, probation, or post-release supervision violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this section within a reasonable time, unless such hearing is waived by the offender. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the offender involved for a period not to exceed 15 days prior to the hearing. The offender shall not be entitled to bail pending the hearing.

(b) Any hearing pursuant to this section may be before the Administrator of the Interstate Compact for Adult Offender Supervision, a deputy of the Administrator, any other person appointed by the Administrator, or any person authorized pursuant to the laws of this State to hear cases of alleged parole, probation, or post-release supervision violation, except that no hearing officer shall be the person making the allegation of violation.

(c) With respect to any hearing pursuant to this section, the offender:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that the offender has committed a violation that may lead to a revocation of parole, probation, or post-release supervision.
(2) Shall be permitted to advise with any persons whose assistance the offender reasonably desires, prior to the hearing.
(3) Shall have the right to confront and examine any persons who have made allegations against the offender, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.
(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of the offender's contentions.

(c1) A record of the hearing shall be made and preserved. As soon as practicable following termination of any hearing conducted pursuant to this section or the waiver of such hearing, the appropriate officer or officers of this State shall report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the offender by the sending state. If the hearing recommendation is to retake or reincarcerate the offender, the hearing officer or officers may detain the offender until notice is received from the sending state. If the sending state provides notice that it intends to retake or reincarcerate the offender, the offender shall remain in custody for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(d) In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact for Adult Offender Supervision, any appropriate judicial or administrative officer or agency in another state may hold a hearing on the alleged violation. Upon receipt of the record of a parole, probation, or post-release supervision violation hearing held in another state pursuant to a statute substantially similar to this section, that record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter. (2002-166, s. 1; 2008-189, s. 1.)

Effect of Amendments. — Session Laws 2008-189, s. 1, effective August 7, 2008, substituted "Adult Offender Supervision" for "the Supervision of Adult Offenders" throughout; in subsection (a), deleted the former third sentence relating to reporting to the sending state, deleted the end of the former fourth sentence related to the period necessary to arrange for retaking or reincarceration, added the last sentence; in subdivision (c)(4), deleted the last sentence relating to preserving a record of the proceedings; and added subsection (c1).

§ 148-65.9. North Carolina sentence to be served in another jurisdiction.

Editor's Note. — This section was not amended in the revision of this Article by Session Laws 2008-189, s. 1.

ARTICLE 8.

Compensation to Persons Erroneously Convicted of Felonies.

§ 148-84. Evidence; action by Industrial Commission; payment and amount of compensation.

(a) At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that the claimant received a pardon of innocence for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall award to the claimant an amount equal to fifty thousand dollars ($50,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, including any time spent awaiting trial. However, (i) in no event shall the compensation, including the compensation provided in subsections (b) and (c) of this section, exceed a total amount of seven hundred fifty thousand dollars ($750,000), and (ii) a claimant is not entitled to compensation for any portion of a prison sentence during which the claimant was also serving a concurrent sentence for conviction of a crime other than the one for which the pardon of innocence was granted.

The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes.

(b) Reserved.

(c) In addition to the compensation provided under subsections (a) and (b) of this section, the Industrial Commission shall determine the extent to which incarceration has deprived a claimant of educational or training opportunities and, based upon those findings, may award the following compensation for loss of life opportunities:

(1) Job skills training for at least one year through an appropriate State program; and

(2) Expenses for tuition and fees at any public North Carolina community college or constituent institution of The University of North Carolina for any degree or program of the claimant's choice that is available from one or more of the applicable institutions. Claimants are also entitled to assistance in meeting any admission standards or criteria required at any of those institutions, including assistance in satisfying requirements for a certificate of equivalency of completion of secondary education. A claimant may apply for aid under this subdivision within 10 years of the claimant's release from incarceration, and aid shall continue for up to a total of five years when initiated within the 10-year period, provided the claimant makes satisfactory progress in the courses or degree program in which the claimant is enrolled. (1947, c. 465, s. 3; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10; 1997-388, s. 3; 2001-424, s. 25.12(a); 2008-173, ss. 1, 2.)

Editor's Note. — Although subsection (a) refers to "subsections (b) and (c) of this section" and subsection (c) refers to "subsections (a) and (b) of this section," the section as amended by

Session Laws 2008-173, ss. 1 and 2, does not contain a subsection (b). Subsection (b) of this section has been so designated and set out as "Reserved" at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-173, ss. 1 and 2, effective August 4, 2008, and applicable to any person granted a pardon of innocence by the Governor on or after January 1, 2004, designated the previously existing provisions as subsection (a); in subsection (a), substituted "fifty thousand dollars ($50,000)" for "twenty thousand dollars ($20,000)," added the clause (i) designator and made related changes, in clause (i), inserted "including the compensation provided in subsections (b) and (c) of this section" and substituted "seven hundred fifty thousand dollars ($750,000)" for "five hundred thousand dollars ($500,000)", and added clause (ii); and added subsection (c).

Chapter 150B.

Administrative Procedure Act.

Article 1.

General Provisions.

Sec.
150B-1. Policy and scope.

Article 3.

Administrative Hearings.

150B-31.1. Contested tax cases.

Article 4.

Judicial Review.

Sec.
150B-44. Right to judicial intervention when decision unreasonably delayed.

ARTICLE 1.

General Provisions.

§ 150B-1. Policy and scope.

(a) Purpose. — This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. — This Chapter confers procedural rights.

(c) Full Exemptions. — This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.
(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
(3) The Utilities Commission.
(4) The Industrial Commission.
(5) The Employment Security Commission.
(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
(7) The North Carolina State Lottery.

(d) Exemptions from Rule Making. — Article 2A of this Chapter does not apply to the following:

(1) The Commission.
(2) Repealed by Session Laws 2000-189, s. 14, effective July 1, 2000.
(3) Repealed by Session Laws 2001-474, s. 34, effective November 29, 2001.
(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.
(5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
(6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.
(7) The State Health Plan for Teachers and State Employees in administering the provisions of Article 3A of Chapter 135 of the General Statutes.
(8) The North Carolina Federal Tax Reform Allocation Committee, with respect to the adoption of the annual qualified allocation plan re-

quired by 26 U.S.C. § 42(m), and any agency designated by the Committee to the extent necessary to administer the annual qualified allocation plan.

(9) The Department of Health and Human Services in adopting new or amending existing medical coverage policies under the State Medicaid Program.

(10) The Economic Investment Committee in developing criteria for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes.

(11) The North Carolina State Ports Authority with respect to fees established pursuant to G.S. 143B-454(a)(11).

(12) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Site Infrastructure Development Program under G.S. 143B-437.02.

(13) The Department of Commerce and the Governor's Office in developing guidelines for the One North Carolina Fund under Part 2H of Article 10 of Chapter 143B of the General Statutes.

(14) The Community Colleges System Office in developing guidelines for the Community College Facilities and Equipment Fund.

(15) The Department of Commerce in developing guidelines for the North Carolina Economic Development Reserve.

(16) The State Ethics Commission with respect to Chapter 138A and Chapter 120C of the General Statutes.

(17) The Department of Commerce in developing guidelines for the NC Green Business Fund under Part 2B of Article 10 of Chapter 143B of the General Statutes.

(18) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Job Maintenance and Capital Development Fund under G.S. 143B-437.012.

(e) Exemptions From Contested Case Provisions. — The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

(1) The Department of Health and Human Services and the Department of Environment and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).

(2) Repealed by Session Laws 1993, c. 501, s. 29.

(3), (4) Repealed by Session Laws 2001-474, s. 35, effective November 29, 2001.

(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.

(6) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

(7) The Department of Correction.

(8) The Department of Transportation, except as provided in G.S. 136-29.

(9) The North Carolina Occupational Safety and Health Review Commission.

(10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(11) Hearings that are provided by the Department of Health and Human Services regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall

be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7.

(12) The State Health Plan for Teachers and State Employees respect to disputes involving the performance, terms, or conditions of a contract between the Plan and an entity under contract with the Plan.

(13) The State Health Plan for Teachers and State Employees with respect to determinations by the Executive Administrator and Board of Trustees, the Plan's designated utilization review organization, or a self-funded health maintenance organization under contract with the Plan that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the Plan's requirements for medical necessity, appropriateness, health care setting, or level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated.

(14) The Department of Crime Control and Public Safety for hearings and appeals authorized under Chapter 20 of the General Statutes.

(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(16) The Department of Health and Human Services with respect to contested cases commenced by (i) Medicaid providers appealing a denial or reduction in reimbursement for community support services, and (ii) community support services providers appealing decisions by the LME to deny or withdraw the provider's endorsement.

(f) Exemption for the University of North Carolina. — Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina. (1973, c. 1331, s. 1; 1975, c. 390; c. 716, s. 5; c. 721, s. 1; c. 742, s. 4; 1981, c. 614, s. 22; 1983, c. 147, s. 2; c. 927, s. 13; 1985, c. 746, ss. 1, 19; 1987, c. 112, s. 2; c. 335, s. 2; c. 536, s. 1; c. 847, s. 2; c. 850, s. 20; 1987 (Reg. Sess., 1988), c. 1082, s. 14; c. 1111, s. 9; 1989, c. 76, s. 29; c. 168, s. 33; c. 373, s. 2; c. 538, s. 1; c. 751, s. 7(44); 1989 (Reg. Sess., 1990), c. 1004, s. 36; 1991, c. 103, s. 1; c. 418, s. 2; c. 477, s. 1; c. 749, ss. 9, 10; 1991 (Reg. Sess., 1992), c. 1030, s. 46; 1993, c. 501, s. 29; 1993 (Reg. Sess., 1994), c. 777, ss. 4(j), 4(k); 1995, c. 249, s. 4; c. 507, s. 27.8(m); 1997-35, s. 2; 1997-278, s. 1; 1997-412, s. 8; 1997-443, ss. 11A.110, 11A.119(a); 2000-189, s. 14; 2001-192, s. 1; 2001-299, s. 1; 2001-395, s. 6(c); 2001-424, ss. 6.20(b), 21.20(c); 2001-446, s. 5(d); 2001-474, ss. 34, 35; 2001-496, s. 8(c); 2002-99, s. 7(b); 2002-159, ss. 31.5(b), 49; 2002-172, s. 2.6; 2002-190, s. 16; 2003-226, s. 17(b); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 1.3; 2004-88, s. 1(e); 2005-133, s. 10; 2005-276, s. 31.1(ff); 2005-300, s. 1; 2005-344, s. 11.1; 2005-455, s. 3.3; 2006-66, ss. 12.8(c), 8.10(d); 2006-201, s. 2(a); 2007-323, ss. 13.2(c), 28.22A(o); 2007-345, s. 12; 2007-491, s. 2; 2007-552, 1st. Ex. Sess., s. 3; 2008-107, s. 10.15A(f); 2008-168, s. 5(a); 2008-187, s. 26(b).)

Community Support Providers Appeals Process. — Session Laws 2008-107, s. 10.15A(e1)-(e4), provides: "(e1) For the purpose of expediting the resolution of community support provider appeals and thereby saving State and federal funds that are paid for services that are found to be unnecessary or otherwise ineligible for payment, the Department shall implement on a temporary basis a community support provider appeals process. The process shall be a substitute for informal provider appeals at the Department level and formal provider appeals by the Office of Administrative Hearings. The community support provider appeals process shall apply to a community support services provider:

"(1) Who is aggrieved by a decision of the Department to reduce, deny, recoup, or recover reimbursement for community support services, or to deny, suspend, or revoke a provider agreement to provide community support services.

"(2) Whose endorsement has been withdrawn or whose application for endorsement has been denied by a local management entity.

"(e2) The community support provider appeals process shall be developed and implemented as follows:

"(1) A hearing under this section shall be commenced by filing a petition with the chief hearings clerk of the Department within 30 days of the mailing of the notice by the Department of the action giving rise to the contested case. The petition shall identify the petitioner, be signed by the party or representative of the party, and shall describe the agency action giving rise to the contested case. As used in this section, "file or filing" means to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Department and acceptance thereof by the chief hearings clerk, except that the hearing officer may permit the papers to be filed with the hearing officer, in which event the hearing officer shall note thereon the filing date. The Department shall supply forms for use in these contested cases.

"(2) If there is a timely request for an appeal, the Department shall promptly designate a hearing officer who shall hold an evidentiary hearing. The hearing officer shall conduct the hearing according to applicable federal law and regulations and shall ensure that:

"a. Notice of the hearing is given not less than 15 days before the hearing. The notice shall state the date, hour, and place of the hearing and shall be deemed to have been given on the date that a copy of the notice is mailed, via certified mail, to the address provided by the petitioner in the petition for hearing.

"b. The hearing is held in Wake County, except that the hearing officer may, after consideration of the numbers, locations, and convenience of witnesses and in order to promote the ends of justice, hold the hearing by telephone or other electronic means or hold the hearing in a county in which the petitioner resides.

"c. Discovery is no more extensive or formal than that required by federal law and regulations applicable to the hearings. Prior to and during the hearing, a provider representative shall have adequate opportunity to examine the provider's own case file. No later than five days before the date of the hearing, each party to a contested case shall provide to each other party a copy of any documentary evidence that the party intends to introduce at the hearing and shall identify each witness that the party intends to call.

"(3) The hearing officer shall have the power to administer oaths and affirmations, subpoena the attendance of witnesses, rule on prehearing motions, and regulate the conduct of the hearing. The following shall apply to hearings held pursuant to this section:

"a. At the hearing, the parties may present such sworn evidence, law, and regulations as are relevant to the issues in the case.

"b. The petitioner and the respondent agency each have a right to be represented by a person of his choice, including an attorney obtained at the party's own expense.

"c. The petitioner and the respondent agency shall each have the right to cross-examine witnesses as well as make a closing argument summarizing his view of the case and the law.

"d. The appeal hearing shall be recorded. If a petition for judicial review is filed pursuant to subsection (f) of this section, a transcript will be prepared and made part of the official report and shall be prepared at no cost to the appellant. In the absence of the filing of a petition for a judicial review, no transcript will be prepared unless requested by a party, in which case each party shall bear the cost of the transcript or part thereof or copy of the transcript or part thereof requested by the party. The recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed as provided in G.S. 108A-79(i)(5).

"(4) The hearing officer shall decide the case based upon a preponderance of the evidence, giving deference to the demonstrated knowledge and expertise of the agency as provided in G.S. 150B-34(a). The hearing officer shall prepare a proposal for the decision, citing relevant law, regulations, and evidence, which shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency.

"(5) The petitioner and the respondent agency shall have 15 days from the date of the mailing of the proposal for decision to present written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who will make the final decision. If neither written arguments are presented, nor extension of time granted by the final agency decision maker for good cause, within 15 days of the date of the mailing of the proposal for decision, the proposal for decision becomes final. If written arguments are presented, such arguments shall be considered and the final decision shall be rendered. The final decision shall be rendered not more than 90 days from the date of the filing of the petition. This time limit may be extended by agreement of the parties or by final agency decision maker, for good cause shown, for an additional period of up to 30 days. The final decision shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency. In the absence of a petition for judicial review filed pursuant to subsection (f) of this section, the final decision shall be binding upon the petitioner and the Department.

"(6) A petitioner who is dissatisfied with the final decision of the Department may file, within 30 days of the service of the decision, a petition for judicial review in the Superior Court of Wake County or of the county from which the case arose. The judicial review shall be conducted according to Article 4 of Chapter 150B of the General Statutes.

"(7) In the event of a conflict between federal law or regulations and State law or regulations, federal law or regulations shall control. This section applies to all petitions that are filed by a Medicaid community support services provider on or after July 1, 2008, and for all Medicaid community support services provider petitions that have been filed at the Office of Administrative Hearings previous to July 1, 2008, but for which a hearing on the merits has not been commenced prior to that date. The requirement that the agency decision must be rendered not more than 90 days from the date of the filing of the petition for hearing shall not apply to (i) community support services provider petitions that were filed at the Office of Administrative Hearings or (ii) requests for a hearing under the Department's informal settlement process prior to the effective date of this act. The Office of Administrative Hearings shall transfer all cases affected by this section to the Department of Health and Human Services within 30 days of the effective date of this section. This act preempts the existing informal appeal process and reconsideration review process at the Department of Health and Human Services and the existing appeal process at the Office of Administrative Hearings with regard to all appeals filed by Medicaid community support services providers under the Medical Assistance program.

"(e3) Notwithstanding any other provision of law to the contrary, the Department of Health and Human Services may, pursuant to its statutory authority or federal Medicaid requirements, suspend the endorsement or Medicaid participation of a provider of community support services pending a final agency decision based on a fair hearing of the provider's appeal filed with the Department under its community support provider appeal process. A provider of community support services whose endorsement, Medicaid participation, or services have been suspended is not entitled to payment during the period the appeal is pending, and the Department shall make no such payment to the provider during that period. If the final agency decision is in favor of the provider, the Department shall remove the suspension, commence payment for provider services, and reimburse the provider for payments withheld during the period of appeal. Contracts between the Department or a local management entity and the provider shall contain a provision indicating the circumstances under which a provider may appeal an agency decision and giving notice of the suspension of payments to the provider while the appeal is pending. This subsection applies to community support provider appeals pending in the Department of Health and Human Services or the Office of Administrative Hearings, as applicable, on and after July 1, 2008.

"(e4) The Department's community support provider appeals process established under this section shall expire July 1, 2010. The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on March 1, 2009, October 1, 2009, and March 1, 2010, on the effectiveness and efficiency of the community support provider appeals process."

Appeal to State MH/DD/SA Appeals Panel. — Session Laws 2008-107, s. 10.15A(h1)-(h6), as amended and added to by Session Laws 2008-118, s. 3.13(a), (b), provides for administrative appeals by Medicaid applicants and recipients. See notes under G.S. 150B-22, 108A-54, and 108A-79.

Editor's note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. —

Session Laws 2008-107, s. 10.15A(f), effective July 1, 2008, inserted "agencies" in the introductory paragraph of subsection (e); added subdivision (e)(16).

Session Laws 2008-168, s. 5(a), effective July 1, 2008, substituted "Article 3A of" for "Parts 2, 3, 4, and 5 of Article 3" in subdivision (d)(7).

Session Laws 2008-187, s. 26(b), effective August 7, 2008, substituted "G.S. 143B-437.012" for "G.S. 143B-437.11" in subdivision (d)(18).

CASE NOTES

Application of Chapter. —

North Carolina Administrative Procedure Act, G.S. 150B-1 et seq., applied, pursuant to G.S. 150B-1(e), to a county employee's declaratory judgment action for a ruling that the county's personnel regulations were not substantially equivalent to the standards established by the North Carolina State Personnel Act, G.S. 126-1 et seq., where the employee's employment with the county was terminated. Steward v. Green, — N.C. App. —, 657 S.E.2d 719, 2008 N.C. App. LEXIS 423 (2008).

Cited in In re Advance Am., Cash Advance Ctrs. of N.C. Inc., — N.C. App. —, 657 S.E.2d 405, 2008 N.C. App. LEXIS 426 (2008).

§ 150B-2. Definitions.

CASE NOTES

"Person Aggrieved." —

County employee was a person aggrieved by the North Carolina Office of State Personnel's determination that a county's personnel regulations were substantially equivalent to the North Caroilna State Personnel Act, G.S. 126-1 et seq. Steward v. Green, — N.C. App. —, 657 S.E.2d 719, 2008 N.C. App. LEXIS 423 (2008).

Scope of Appellate Review. — In an action arising from allegations of age discrimination, while the superior court properly applied both a de novo review and the whole-record test to the respective issues on appeal under G.S. 150B-51(b) when it reviewed the final decision of the State Personnel Commission (SPC), it erred when it improperly substituted its judgment for that of the SPC under the whole-record test. Thus, remand was ordered for the superior court to affirm the SPC's final agency decision. Trotter v. N.C. HHS, — N.C. App. —, 659 S.E.2d 749, 2008 N.C. App. LEXIS 712 (2008).

Applied in Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008); Kelly v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 664 S.E.2d 625, 2008 N.C. App. LEXIS 1544 (2008).

§ 150B-4. Declaratory rulings.

CASE NOTES

Cited in Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

ARTICLE 2A.

Rules.

Part 1. General Provisions.

§ 150B-20. Petitioning an agency to adopt a rule.

CASE NOTES

Applied in Table Rock Chapter of Trout Unlimited v. Envtl. Mgmt. Comm'n, — N.C. App. —, 663 S.E.2d 333, 2008 N.C. App. LEXIS 1323 (2008).

Part 2. Adoption of Rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

Medicaid Services and Payment Bases. — Session Laws 2007-323, s. 10.36(d), as amended by Session Laws 2007-345, ss. 1-3, 28 and 29, and as amended by Session Laws 2008-107, s. 10.10(b), provides: "(d) Services and Payment Bases. — The Department shall spend funds appropriated for Medicaid services in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection. Unless otherwise provided, services and payment bases will be as prescribed in the State Plan as established by the Department of Health and Human Services and may be changed with the approval of the Director of the Budget.

"(1) Hospital inpatient.

"(2) Hospital outpatient. — Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.

"(3) Nursing facilities. — Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare.

"(4) Physicians, certified nurse midwife services, certified registered nurse anesthetists, nurse practitioners. — Fee schedules as developed by the Department of Health and Human Services.

"(5) Community Alternative Program, EPSDT Screens. — Payments in accordance with rate schedule developed by the Department of Health and Human Services.

"(6) Home health and related services, durable medical equipment. — Payments according to reimbursement plans developed by the Department of Health and Human Services.

"(7) Hearing aids. — Wholesale cost plus dispensing fee to provider.

"(8) Rural health clinical services. — Provider-based, reasonable cost; nonprovider-based, single-cost reimbursement rate per clinic visit.

"(9) Family planning. — Negotiated rate for local health departments. For other providers see specific services, e.g., hospitals, physicians.

"(10) Independent laboratory and X-ray services. — Uniform fee schedules as developed by the Department of Health and Human Services.

"(11) Ambulatory surgical centers.

"(12) Private duty nursing, clinic services, prepaid health plans.

"(13) Intermediate care facilities for the mentally retarded.

"(14) Chiropractors, podiatrists, optometrists, dentists.

"(15) Limitations on Dental Coverage. — Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.

"(16) Medicare Buy-In. — Social Security Administration premium.

"(17) Ambulance services. — Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.

"(18) Optical supplies. — Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.

"(19) Medicare crossover claims. — The Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services. The Department may disregard application of this policy in cases where application of the policy would adversely affect patient care.

"(20) Physical therapy, occupational therapy, and speech therapy. — Services limited to EPSDT-eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services. Physical therapy, occupational therapy, and speech therapy services are subject to prior approval and utilization review.

"(21) Personal care services. — Payment in accordance with the State Plan developed by the Department of Health and Human Services.

"(22) Case management services. — Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.

"(23) Hospice.

"(24) Medically necessary prosthetics or orthotics. — In order to be eligible for reimbursement, providers must be licensed or certified by the occupational licensing board or the certification authority having authority over the provider's license or certification. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.

"(25) Health insurance premiums.

"(26) Medical care/other remedial care. — Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates.

"(27) Pregnancy-related services. — Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

"(28) Drugs. — Reimbursements. Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents ($5.60) per prescription for generic drugs and four dollars ($4.00) per prescription for brand-name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

"Limitations on quantity. — The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid pharmacy program, except that the Department shall not impose limitations on brand-name medications for which there is a generic equivalent in cases where the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase 'medically necessary.'

"Dispensing of generic drugs. — Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for atypical antipsychotic drugs and drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase 'medically necessary.' An initial prescription order for an atypical antipsychotic drug or a drug listed in the narrow therapeutic drug index that does not contain the phrase 'medically necessary' shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. As used in this subsection, 'brand name' means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and 'established name' has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

"Prior authorization. — The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of (i) mental illness, including but not limited to, medications for schizophrenia, bipolar disorder, or major depressive disorder, or (ii) HIV/AIDS, except that the Department of Health and Human Services shall continually review utilization of medications under the State Medical Assistance Program prescribed for Medicaid recipients for the treatment of mental illness, including but not limited to, medications for schizophrenia, bipolar disorder, or major depressive disorder. For individuals 18 years of age and under who are prescribed three or more psychotropic medications, the Department shall implement clinical edits that target inefficient, ineffective, or potentially harmful prescribing patterns. When such patterns are identified, the Medical Director for the Division of Medical Assistance and the Chief of Clinical Policy for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall require a peer-to-peer consultation with the target prescribers. Alternatives discussed during the peer-to-peer consultations shall be based upon:

"a. Evidence-based criteria available regarding efficacy or safety of the covered treatments; and

"b. Policy approval by a majority vote of the North Carolina Physicians Advisory Group (NCPAG).

"The target prescriber has final decision-making authority to determine which prescription drug to prescribe or refill.

"The Department shall report on the implementation of this subdivision not later than January 1, 2008, and quarterly thereafter to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Fiscal Research Division, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

"(29) Other mental health services. — Unless otherwise covered by this section, coverage is limited to:

"a. Services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services not to exceed the upper limits established in federal regulations, and

"b. For children eligible for EPSDT services provided by:

"1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and

"2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.

"c. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addictions specialists, and certified clinical supervisors, Medicaid-eligible adults may be self-referred.

"d. Payments made for services rendered in accordance with this subdivision shall be to qualified providers in accordance with approved policies and the State Plan. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to require any private health insurer or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

"Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2. of this subdivision shall be established by the Division of Medical Assistance."

Editor's note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case.

Appeal to State MH/DD/SA Appeals Panel. — Session Laws 2008-107, s. 10.15A(h1)-(h6) as amended and added to by Session Laws 2008-118, s. 3.13(a), (b), provides:

"(h1)(1) **General Rule.** — Notwithstanding any provision of State law or rules to the contrary, this subsection shall govern the process used by a Medicaid applicant or recipient to appeal a determination made by the Department of Health and Human Services to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this subsection, the phrase 'adverse determination' means a determination by the Department to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this subsection, all references to an applicant or recipient include the applicant or recipient's parent, guardian, or legal representative; however, notice need only be given to a parent, guardian, or legal representative who has requested in writing to receive the notice.

(2) **Notice.** — Except as otherwise provided by federal law or regulation, at least 30 days before the effective date of an adverse determination, the Department shall notify the applicant or recipient, and the provider, if applicable, in writing of the determination and of the applicant's or recipient's right to appeal the determination. The notice shall be mailed on the date indicated on the notice as the date of the determination. The notice shall include:

"a. An identification of the applicant or recipient whose services are being affected by the adverse determination, including full name and Medicaid identification number.

"b. An explanation of what service is being denied, terminated, suspended, or reduced and the reason for the determination.

"c. The specific regulation, statute, or medical policy that supports or requires the adverse determination.

"d. The effective date of the adverse determination.

"e. An explanation of the applicant's or recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an administrative law judge.

"f. An explanation of how the applicant or recipient can request a hearing and a statement that the applicant or recipient may represent himself or use legal counsel, a relative, or other spokesperson.

"g. A statement that the applicant or recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the applicant or recipient, whichever is less, if the applicant or recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.

"h. The name and telephone number of a contact person at the Department to respond in a timely fashion to the applicant's or recipient's questions.

"i. The telephone number by which the applicant or recipient may contact a Legal Aid/Legal Services office.

"j. The appeal request form described in subdivision (4) of this subsection that the applicant or recipient may use to request a hearing.

"(3) **Appeals.** — Except as provided by this subsection and subsection 10.15A(h2) of this act, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes. The applicant or recipient must request a hearing within 30 days of the mailing of the notice required by subdivision (2) of this subsection by sending an appeal request form to the Office of Administrative Hearings and the Department. The Department shall immediately forward a copy of the notice to the Office of Administrative Hearings electronically. The information contained in the notice is confidential unless the recipient appeals. The Office of Administrative Hearings may dispose of the records after one year. The Department may not influence, limit, or interfere with the applicant's or recipient's decision to request a hearing.

"4. **Appeal Request Form.** — Along with the notice required by subdivision (2) of this subsection, the Department shall also provide the applicant or recipient with an appeal request form which shall be no more than one side of one page. The form shall include the following:

"a. A statement that in order to request an appeal, the applicant or recipient must send the form by mail or fax to the address or fax number listed on the form within 30 days of mailing of the notice.

"b. The applicant's or recipient's name, address, telephone number, and Medicaid identification number.

"c. A preprinted statement that indicates that the applicant or recipient would like to appeal the specific adverse determination of which the applicant or recipient was notified in the notice.

"d. A statement informing the applicant or recipient that he or she may choose to be represented by a lawyer, a relative, a friend, or other spokesperson.

"e. A space for the applicant's or recipient's signature and date.

"(5) **Final Decision.** — After a hearing before an administrative law judge, the judge shall return the decision and record to the Department in accordance with subsection 10.15A(h2) of this act. The Department shall make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly notify the applicant or recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes."

"(h2)(1) **Application.** — This subsection applies only to contested Medicaid cases commenced by Medicaid applicants or recipients under subsection 10.15A(h1) of this act. Except as otherwise provided by subsection 10.15A(h1) and this subsection governing time lines and procedural steps, a contested Medicaid case commenced by a Medicaid applicant or recipient is subject to the provisions of Article 3 of Chapter 150B. To the extent any provision in this subsection or subsection 10.15A(h1) of this act conflicts with another provision in Article 3 of Chapter 150B, this subsection and subsection 10.15A(h1) controls.

"(2) **Simple Procedures.** — Notwithstanding any other provision of Article 3 of Chapter 150B of the General Statutes, the chief administrative law judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid applicant or recipient in order to complete the case as quickly as possible. To the extent possible, the Hearings Division shall schedule and hear contested Medicaid cases within 45 days of submission of a request for appeal. The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An administrative law judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid applicant or recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing. The administrative law judge may allow brief extensions of the time limits contained in this section for good cause and to ensure that the record is complete. Good cause includes delays resulting from untimely receipt of documentation needed to render a decision and other unavoidable and unforeseen circumstances.

"(3) **Mediation.** — Upon receipt of an appeal request form as provided by subdivision 10.15A(h1)(4) of this act or other clear request for a hearing by a Medicaid applicant or recipient, the chief administrative law judge shall immediately notify the Mediation Network of North Carolina which shall within five days contact the petitioner to offer mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. If mediation is successful, the mediator shall inform the Hearings Division, which shall confirm with the agency that a settlement has been achieved, and the case shall be dismissed. If the petitioner rejects the offer of mediation or the mediation is unsuccessful, the mediator shall notify the Hearings Division that the case will proceed to hearing. Nothing in this subdivision shall restrict the right to a contested case hearing.

"(4) **Burden of Proof.** — The petitioner has the burden of proof to show entitlement to a requested benefit or the propriety of requested agency action when the agency has denied the benefit or refused to take the particular action. The agency has the burden of proof when the appeal is from an agency determination to impose a penalty or reduce, terminate, or suspend a benefit previously granted. The party with the burden of proof on any issue has the burden of going forward, and the administrative law judge shall not make any ruling on the preponderance of evidence until the close of all evidence.

"(5) **Decision.** — The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. The Hearings Division shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing. The judge shall prepare a written decision and send it to the parties. The decision must be sent together with the record to the agency within 20 days of the conclusion of the hearing.

"(h3) From funds available to the Department of Health and Human Services for the 2008-2009 fiscal year, the sum of two million dollars ($2,000,000) shall be transferred by the Department of Health and Human Services to the Office of Administrative Hearings. These funds shall be allocated by the Office of Administrative Hearings for mediation services provided for Medicaid applicant and recipient appeals and to contract for other services necessary to conduct the appeals process.

"(h4) Effective October 1, 2008, the Department of Health and Human Services shall discontinue its current informal appeals process for Medicaid applicants and recipients appealing a determination made by the Department to deny, terminate, suspend, or reduce Medicaid covered services. All such informal appeals by Medicaid applicants or recipients under the current system which are pending on that date and for which a hearing has not been held shall be discontinued and the applicant or recipient offered an opportunity to appeal to the Office of Administrative Hearings in accordance with the provisions of subsection 10.15A(h1) of this act. The Department shall make every effort to resolve or settle all of the backlogged cases prior to the effective date of this act.

"(h5) Nothing in this act shall prevent the Department of Health and Human Services from engaging in an informal review of the case with the applicant or recipient prior to issuing a notice of adverse determination as provided by subsection 10.15A(h1) of this act.

"(h6) The appeals process for Medicaid applicants and recipients established under this section shall expire July 1, 2010. The Department of Health and Human Services and the Office of Administrative Hearings shall each report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on March 1, 2009, October 1, 2009, and March 1, 2010, on the costs, effectiveness, and efficiency of the appeals process for Medicaid applicants and recipients and make recommendations regarding the continuation of the process."

Community Support Providers Appeals Process. — Session Laws 2008-107, s. 10.15A(e1)-(e4), provides for administrative appeals by community support providers. See notes under G.S. 150B-1, 122C-115.4, and 122C-151.4.

Editor's note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

CASE NOTES

"Representative" Not Coterminous with "Attorney." — Dismissal of petition for review of a department's decision to retract a corporate owner's eligibility for reimbursement of environmental clean-up costs was in error because, although the petition was signed by a non-attorney agent for owner, 26 N.C. Admin. Code 3.0120(e) stated that a party did not need to be represented by an attorney at administrative hearings; the term "representative" as used in G.S. 150B-23, was not coterminous with the term "attorney." Allied Envtl. Servs., PLLC v. N.C. Dep't of Envtl. & Natural Res., Div. of Waste Mgmt., — N.C. App. —, 653 S.E.2d 11, 2007 N.C. App. LEXIS 2369 (2007).

Compliance with Procedures Required for Jurisdiction. —

County employee, as a person aggrieved by the North Carolina Office of State Personnel's determination that a county's personnel regulations were substantially equivalent to the North Carolina State Personnel Act, G.S. 126-1 et seq., was able to commence a contested case pursuant to G.S. 150B-23(a) by filing a petition with the North Carolina Office of Administrative Hearings. Steward v. Green, — N.C. App. —, 657 S.E.2d 719, 2008 N.C. App. LEXIS 423 (2008).

§ 150B-25. Conduct of hearing; answer.

CASE NOTES

Applied in Mission Hosps., Inc. v. N.C. HHS, — N.C. App. —, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

§ 150B-29. Rules of evidence.

CASE NOTES

Applied in Mission Hosps., Inc. v. N.C. HHS, — N.C. App. —, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

§ 150B-30. Official notice.

CASE NOTES

Applied in Mission Hosps., Inc. v. N.C. HHS, — N.C. App. —, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

§ 150B-31. Stipulations.

CASE NOTES

Cited in Mission Hosps., Inc. v. N.C. HHS, — N.C. App. —, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

§ 150B-31.1. Contested tax cases.

(a) Application. — This section applies only to contested tax cases. A contested tax case is a case involving a disputed tax matter arising under G.S. 105-241.15. To the extent any provision in this section conflicts with another provision in this Article, this section controls.

(b) Simple Procedures. — The Chief Administrative Law Judge may limit and simplify the procedures that apply to a contested tax case involving a taxpayer who is not represented by an attorney. An administrative law judge assigned to a contested tax case must make reasonable efforts to assist a taxpayer who is not represented by an attorney in order to assure a fair hearing.

(c) Venue. — A hearing in a contested tax case must be conducted in Wake County, unless the parties agree to hear the case in another county.

(d) Reports. — The following agency reports are admissible without testimony from personnel of the agency:

(1) Law enforcement reports.

(2) Government agency lab reports used for the enforcement of motor fuel tax laws.

(e) Confidentiality. — The record, proceedings, and decision in a contested tax case are confidential until the final decision is issued in the case. (2007-491, s. 42; 2008-134, s. 9.)

Effect of Amendments. — Session Laws 2008-134, s. 9, effective July 28, 2008, rewrote subsection (d).

§ 150B-33. Powers of administrative law judge.

CASE NOTES

Authority to Determine Validity of Rules. —

When the North Carolina Department of Health and Human Resources, Division of Facility Services, Certificate of Need Section, denied a health system's request for a certificate of need (CON) to build a hospital and granted a CON to the system's competitor, an administrative law judge was authorized to find that 10A N.C. Admin. Code 14C.2303(3), regarding findings of the utilization of computerized axial tomography equipment in a geographic area, was "void as applied" to the facts because the rule required consideration of the health system's underutilization of such equipment in a hospital that was about to close in determining whether to authorize the competitor to install such equipment in the hospital the competitor proposed for the area, and the system's underutilization was irrelevant to the area's need for such equipment, and G.S. 150B-33(b)(9)(3) allowed the administrative law judge to find that a rule was void in a particular case because the rule was not reasonably necessary to enable an agency to fulfill a duty delegated to the agency by the general assembly. Good Hope Health Sys., LLC v. N.C. HHS, — N.C. App. —, 658 S.E.2d 665, 2008 N.C. App. LEXIS 79 (2008).

Applied in Mission Hosps., Inc. v. N.C. HHS, — N.C. App. —, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

§ 150B-34. Decision of administrative law judge.

CASE NOTES

Administrative agency's failure to comply with the mandate of G.S. 150B-34(c) and address all unadopted findings of an administrative law judge (ALJ) in its final agency decision prejudiced a party's right to meaningful appellate review to the limited extent that the party was not afforded the opportunity to address the agency's reasoning for rejecting material and essential findings by the ALJ. Upon remand, the agency was to address all unadopted findings of the ALJ in its final agency decision. Mission Hosps., Inc. v. N.C. HHS, — N.C. App. —, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

§ 150B-35. No ex parte communication; exceptions.

CASE NOTES

Ex parte communication by a director for an administrative agency to counsel for a party following a contested case hearing in the preparation of a final agency decision violated G.S. 150B-35 and constituted an error of law under G.S. 150B-51(b). Mission Hosps., Inc. v. N.C. HHS, — N.C. App. —, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

§ 150B-37. Official record.

CASE NOTES

Cited in Mission Hosps., Inc. v. N.C. HHS, — N.C. App. —, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

Article 4.

Judicial Review.

§ 150B-43. Right to judicial review.

CASE NOTES

I. General Consideration.
V. Exhaustion of Administrative Remedies.

I. GENERAL CONSIDERATION.

Construction with Other Provisions. — Procedures and requirements of the North Carolina Administrative Procedure Act, G.S. 150B-1 et seq., were not to be incorporated into the statutory requirements under G.S. 53-92(d) for an appeal from a final decision of the North Carolina State Banking Commission. In re Advance Am., Cash Advance Ctrs. of N.C. Inc., — N.C. App. —, 657 S.E.2d 405, 2008 N.C. App. LEXIS 426 (2008).

Applied in Table Rock Chapter of Trout Unlimited v. Envtl. Mgmt. Comm'n, — N.C. App. —, 663 S.E.2d 333, 2008 N.C. App. LEXIS 1323 (2008).

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

Exhaustion of Administrative Remedies Required. —

Final agency decision regarding whether a county's personnel regulations were substantially equivalent to the North Carolina State Personnel Act, G.S. 126-1 et seq., was reviewable by a trial court only after the aggrieved person had exhausted all available administrative remedies made available by statute or agency rule. Steward v. Green, — N.C. App. —, 657 S.E.2d 719, 2008 N.C. App. LEXIS 423 (2008).

§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge. The Board of Trustees of the North Carolina State Health Plan for Teachers and State Employees is a "board" for purposes of this section. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(17); 1987, c. 878, ss. 5, 27; 1991, c. 35, s. 9; 2000-190, s. 9; 2008-168, s. 5(b).)

Effect of Amendments. — Session Laws 2008-168, s. 5(b), effective July 1, 2008, added the last sentence.

§ 150B-45. Procedure for seeking review; waiver.

CASE NOTES

Application of Section. —

Procedures and requirements of the North Carolina Administrative Procedure Act, G.S. 150B-1 et seq., were not to be incorporated into the statutory requirements under G.S. 53-92(d) for an appeal from a final decision of the North Carolina State Banking Commission. In re Advance Am., Cash Advance Ctrs. of N.C. Inc., — N.C. App. —, 657 S.E.2d 405, 2008 N.C. App. LEXIS 426 (2008).

§ 150B-46. Contents of petition; copies served on all parties; intervention.

CASE NOTES

Cited in In re Advance Am., Cash Advance Ctrs. of N.C. Inc., — N.C. App. —, 657 S.E.2d 405, 2008 N.C. App. LEXIS 426 (2008).

§ 150B-51. Scope and standard of review.

CASE NOTES

I. General Consideration.
III. Unlawful Procedure.
IV. "Whole Record" Test.

I. GENERAL CONSIDERATION.

Superior Court Review of Agency Decision. —

Trial court's finding that it was permitted to give appropriate weight to an agency's demonstrated expertise and consistency in applying various statutes was proper because, under G.S. 150B-51(c), the agency's consistently applied interpretation of the law should have been accorded the same deference it was entitled to under prior law. Rainey v. N.C. Dep't of Pub. Instruction, 361 N.C. 679, 652 S.E.2d 251, 2007 N.C. LEXIS 1096 (2007).

Scope of Appellate Review. — In an action arising from allegations of age discrimination, while the superior court properly applied both a de novo review and the whole-record test to the respective issues on appeal under G.S. 150B-51(b) when it reviewed the final decision of the State Personnel Commission (SPC), it erred when it improperly substituted its judgment for that of the SPC under the whole-record test. Thus, remand was ordered for the superior court to affirm the SPC's final agency decision. Trotter v. N.C. HHS, — N.C. App. —, 659 S.E.2d 749, 2008 N.C. App. LEXIS 712 (2008).

Review of Discrimination Cases. —

Because the Office of Administrative Hearings had jurisdiction to hear an African-American employee's contested case of racial discrimination, the employee met his prima facie burden of discrimination, the trial court applied the appropriate standard of review, and the employee presented sufficient evidence of unequal treatment of an African-American employee compared to a Caucasian employee, and established that the Hatch Act was a pretext for discrimination, a finding of discrimination by an administrative law judge was upheld. Corbett v. N.C. DMV, — N.C. App. —, 660 S.E.2d 233, 2008 N.C. App. LEXIS 897 (2008).

Applied in Kelly v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 664 S.E.2d 625, 2008 N.C. App. LEXIS 1544 (2008).

Cited in Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

III. UNLAWFUL PROCEDURE.

Ex Parte Communication. — Ex parte communication by a director for an administrative agency to counsel for a hospital following a contested case hearing in the preparation of a final agency decision violated G.S. 150B-35 and constituted an error of law under G.S. 150B-51(b) as an oncology treatment center's substantial right to notice and a genuine opportunity to be heard was prejudiced by the process through which the agency issued its final decision. Mission Hosps., Inc. v. N.C. HHS, — N.C. App. —, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

IV. "WHOLE RECORD" TEST.

Agency's Findings of Fact Supported by Competent Evidence Are Conclusive. —

When the North Carolina Department of Health and Human Resources, Division of Facility Services, Certificate of Need Section, denied a health system's request for a certificate of need (CON) to build a hospital and granted a CON to the system's competitor, competent evidence supported the agency's finding that, even though the system had previously been granted a CON for a different project, the system was not going to complete that project, and a requirement that the agency "consider" the previously granted CON did not require the agency to find that the system would successfully develop the previously approved project and factor a hypothetical completed hospital into the agency's determinations regarding the population to be served and the possibility of duplicative services. Good Hope Health Sys., LLC v. N.C. HHS, — N.C. App. —, 658 S.E.2d 665, 2008 N.C. App. LEXIS 79 (2008).

§ 150B-52. Appeal; stay of court's decision.

CASE NOTES

Scope of Appellate Review. —

In an action arising from allegations of age discrimination, while the superior court properly applied both a de novo review and the whole-record test to the respective issues on appeal under G.S. 150B-51(b) when it reviewed the final decision of the State Personnel Commission (SPC), it erred when it improperly substituted its judgment for that of the SPC under the whole-record test. Thus, remand was ordered for the superior court to affirm the SPC's final agency decision. Trotter v. N.C. HHS, — N.C. App. —, 659 S.E.2d 749, 2008 N.C. App. LEXIS 712 (2008).

Applied in White v. Tippett, — N.C. App. —, 652 S.E.2d 728, 2007 N.C. App. LEXIS 2359 (2007); Kelly v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 664 S.E.2d 625, 2008 N.C. App. LEXIS 1544 (2008).

Chapter 153A.

Counties.

Article 5.

Administration.

Part 4. Personnel.

Sec.
153A-98. Privacy of employee personnel records.

Article 7.

Taxation.

153A-148.1. Disclosure of certain information prohibited.
153A-150. (Effective July 1, 2009) Reserve for reappraisal.
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153A-156.1. (For effective date, see note) Heavy equipment gross receipts tax in lieu of property tax.

Article 9A.

Special Assessments for Critical Infrastructure Needs. (Expires July 1, 2013).

153A-210.1. (Expires July 1, 2013) Purpose.
153A-210.2. (Expires July 1, 2013) Assessments.
153A-210.3. (Expires July 1, 2013) Petition required.
153A-210.4. (Expires July 1, 2013) Financing a project for which an assessment is imposed.
153A-210.5. (Expires July 1, 2013) Payment of assessments by installments.
Sec.
153A-210.6. (Expires July 1, 2013) Revenue bonds.

Article 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

153A-221. Minimum standards.

Article 16.

County service districts; county research and production service districts; county economic development and training districts.

Part 1. County Service Districts.

153A-301. Purposes for which districts may be established.
153A-304.1. Reduction in district after annexation.
153A-304.4. Reduction in law enforcement service district after annexation.
153A-309.3. Rate limitation in certain districts — Fire protection service districts for industrial property.

Article 18.

Planning and Regulation of Development.

Part 4. Building Inspection.

153A-357. Permits.

ARTICLE 5.

Administration.

Part 4. Personnel.

§ 153A-98. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a county are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the county with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the county.

(b) The following information with respect to each county employee is a matter of public record: name; age; date of original employment or appointment to the county service; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the county has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and the office to which the employee is currently assigned. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity. The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a county employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A county employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The county manager, with concurrence of the board of county commissioners, or, in counties not having a manager, the board of county commissioners may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary

action, reinstatement, transfer, or termination of a county employee and the reasons for that personnel action. Before releasing the information, the manager or board shall determine in writing that the release is essential to maintaining public confidence in the administration of county services or to maintaining the level and quality of county services. This written determination shall be retained in the office of the manager or the county clerk, is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the county's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(c2) The board of county commissioners may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the county as long as each personnel file so examined is retained.

(c3) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former local governmental employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees.

(d) The board of commissioners of a county that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars ($500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 701, s. 1; 1981, c. 926, ss. 1, 5-8; 1993, c. 539, ss. 1059, 1060; 1994, Ex. Sess., c. 24, s. 14(c); 2007-508, s. 6; 2008-194, s. 11(d).)

Effect of Amendments. — Session Laws 2008-194, s. 11(d), effective August 8, 2008, added subsection (c3).

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

§ 153A-103. Number of employees in offices of sheriff and register of deeds.

CASE NOTES

Employee Was an At-Will Employee. — Employee failed to state a claim for wrongful termination in violation of public policy as the employee was an at-will employee under G.S. 153A-103(1), and the employee did not meet a heightened pleading standing by alleging a violation of any "explicit statutory or constitutional provision" or that a sheriff encouraged the employee to violate any law that might result in potential harm to the public. Gillis v. Montgomery County Sheriff's Dep't, — N.C. App. —, 663 S.E.2d 447, 2008 N.C. App. LEXIS 1314 (2008).

Article 7.

Taxation.

§ 153A-148.1. Disclosure of certain information prohibited.

(a) Disclosure Prohibited. — Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a county who in the course of service to or employment by the county has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.
(2) Review by the Attorney General or a representative of the Attorney General.
(3) To sort, process, or deliver tax information on behalf of the county, as necessary to administer a tax.
(4) To exchange information with a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes, when the information is needed to fulfill a duty imposed on the authority or on the county.
(5) To exchange information with the Department of Revenue, when the information is needed to fulfill a duty imposed on the Department or on the county.
(6) To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker.

(b) Punishment. — A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1993, c. 485, s. 33; 1994, Ex. Sess., c. 14, s. 66; 1998-139, s. 2; 2008-35, s. 1.4.)

Effect of Amendments. — Session Laws 2008-35, s. 1.4, effective for taxes imposed for taxable years beginning on or after July 1, 2008, added subdivision (a)(6).

§ 153A-150. (Effective July 1, 2009) Reserve for reappraisal.

Before the beginning of the fiscal year immediately following the effective date of a reappraisal of real property conducted as required by G.S. 105-286, the county budget officer shall present to the board of commissioners a budget for financing the cost of the next reappraisal. The budget shall estimate the cost of the reappraisal and shall propose a plan for raising the necessary funds in annual installments during the intervening years between reappraisals, with all installments as nearly uniform as practicable. The board shall consider this budget, making any amendments to the budget it deems advisable, and shall adopt a resolution establishing a special reserve fund for the next reappraisal. In the budget ordinance of the first fiscal year of the plan, the board of commissioners shall appropriate to the special reappraisal reserve fund the amount set out in the plan for the first year's installment. When the county budget for each succeeding fiscal year is in preparation, the board shall review the reappraisal budget with the budget officer and shall amend it, if necessary, so that it will reflect the probable cost at that time of the reappraisal and will produce the necessary funds at the end of the intervening period. In the budget ordinance for each succeeding fiscal year, the board shall appropriate to the special reappraisal reserve fund the amount set out in the plan as due in that year.

Moneys appropriated to the special reappraisal reserve fund shall not be available or expended for any purpose other than the reappraisal of real property required by G.S. 105-286, except that the funds may be deposited at interest or invested as permitted by G.S. 159-30. If there is a fund balance in the reserve fund following payment for the required reappraisal, it shall be retained in the fund for use in financing the next required reappraisal.

Within 10 days after the adoption of each annual budget ordinance, the county finance officer shall report to the Department of Revenue, on forms to be supplied by the Department, the terms of the county's reappraisal budget, the current condition of the special reappraisal reserve fund, and the amount appropriated to the reserve fund in the current fiscal year. (1959, c. 704, s. 6; 1971, c. 806, s. 4; c. 931, s. 2; 1973, c. 476, s. 193; c. 822, s. 1; 2008-146, s. 1.3.)

Section Set Out Twice. — The section above is effective July 1, 2009. For the section in effect until July 1, 2009, see the main volume.

Editor's Note. — Session Laws 2008-146, s. 6, provides: "The Revenue Laws Study Committee must study the following:

"(1) The effect of PART I of this act and determine whether new positions are needed to perform sales assessment ratio studies in additional counties each year and to perform other functions related to this act.

"(2) The definition of income as it applies to the homestead exclusion."

Effect of Amendments. — Session Laws 2008-146, s. 1.3, effective July 1, 2009, deleted "octennial" preceding "reappraisal" in the section heading; deleted "octennial" and "eight-year" throughout; in the first paragraph, substituted "intervening years between reappraisals" for "next fiscal years" in the second sentence, and inserted "intervening" preceding "period" at the end of the next-to-last sentence; and made stylistic changes.

§ 153A-155. Uniform provisions for room occupancy taxes.

(a) Scope. — This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. — A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. — Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the operator may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the operator's business records kept in the ordinary course of business and collect tax on the allocated price of the taxable accommodation.

The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business.

The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. — The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. — A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. — A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(f1) Use. — The proceeds of a room occupancy tax shall not be used for development or construction of a hotel or another transient lodging facility.

(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing District. (1997-102, s. 3; 1997-255, s. 2; 1997-342, s. 2; 1997-364, s. 3; 1997-410, s. 6; 1998-14, s. 2; 1999-155, s. 2; 1999-205, s. 2; 1999-286, s. 2; 2000-103, s. 5; 2001-162, s. 2; 2001-305, s. 2; 2001-321, s. 3; 2001-381, s. 10; 2001-434, s. 1; 2001-439, s. 18.2; 2001-468, s. 3; 2001-480, s. 14; 2001-484, s. 2; 2002-138, s. 5; 2004-106, s. 2; 2004-120, s. 3; 2004-170, ss. 36(a), 42(a); 2004-199, s. 60(a); 2005-16, s. 2; 2005-46, s. 1.2; 2005-53, s. 2; 2005-197, s. 6; 2005-233, s. 6.1; 2006-120, s. 8.1; 2006-127, s. 2; 2006-128, s. 6; 2006-129, s. 2; 2006-162, s. 20(a); 2006-167, s. 7(e); 2006-264, s. 81(a); 2007-19, s. 3; 2007-63, s. 3; 2007-223, s. 3; 2007-224, s. 5; 2007-265, s. 2; 2007-315, s. 2; 2007-318, s. 2; 2007-337, s. 3; 2007-340, s. 9; 2007-527, ss. 23, 43; 2008-33, s. 2; 2008-134, s. 12(b); 2008-187, s. 31.)

Editor's Note. —

Session Laws 2008-134, s. 79, provides: "Sections 16 through 60 of this act become effective January 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law [July 28, 2008]."

Effect of Amendments. —

Session Laws 2007-318, s. 2, as amended by Session Laws 2008-187, s. 31, effective August 7, 2008, inserted "Chatham" in subsection (g).

Session Laws 2008-33, s. 2, effective June 30, 2008, inserted "Cherokee" in subsection (g).

Session Laws 2008-134, s. 12(b), effective July 28, 2008, rewrote subsection.

§ 153A-156.1. (For effective date, see note) Heavy equipment gross receipts tax in lieu of property tax.

(a) Definitions. — The following definitions apply in this section:

(1) Heavy equipment. — Earthmoving, construction, or industrial equipment that is mobile, weighs at least 1,500 pounds, and meets any of the descriptions listed in this subdivision. The term includes an attachment for heavy equipment, regardless of the weight of the attachment.

a. It is a self-propelled vehicle that is not designed to be driven on a highway.

b. It is industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

(2) Short-term lease or rental. — Defined in G.S. 105-187.1.

(b) Tax Authorized. — A county may, by resolution, impose a tax at the rate of one and two-tenths percent (1.2%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The heavy equipment subject to this tax is exempt from property tax under G.S. 105-275, and this tax provides an alternative to a property tax on the equipment. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person under G.S. 105-163.010.

The tax authorized by this section applies to gross receipts that are subject to tax under G.S. 105-164.4(a)(2). Gross receipts from the short-term lease or rental of heavy equipment are subject to a tax imposed by a county under this section if the place of business from which the heavy equipment is delivered is located in the county.

(c) Payment. — A person whose principal business is the short-term lease or rental of heavy equipment is required to remit a tax imposed by this section to the county finance officer. The tax is payable quarterly and is due by the last day of the month following the end of the quarter. The tax is intended to be added to the amount charged for the short-term lease or rental of heavy equipment and paid to the heavy equipment business by the person to whom the heavy equipment is leased or rented.

(d) Enforcement. — The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to a tax imposed under this section. The county finance officer has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(e) Effective Date. — A tax imposed under this section becomes effective on the date set in the resolution imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted.

(f) Repeal. — A county may, by resolution, repeal a tax imposed under this section. The repeal is effective on the date set in the resolution. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted. (2008-144, s. 2.)

Editor's Note. — Section Laws 2008-144, s. 5 made this section effective August 2, 2008. The act further provides that a tax imposed under G.S. 153A-156.1 or G.S. 160A-215.2, as enacted by this act, may not become effective before January 1, 2009."

Article 9.

Special Assessments.

§ 153A-199. Payment of assessments in full or by installments.

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984; Cumberland: 2008-109.

Article 9A.

Special Assessments for Critical Infrastructure Needs.

(Expires July 1, 2013.)

§ 153A-210.1. (Expires July 1, 2013) Purpose.

This Article enables counties that face increased demands for infrastructure improvements as a result of rapid growth and development to issue revenue bonds payable from special assessments imposed under this Article on benefited property. This Article supplements the authority counties have in Article 9 of this Chapter. The provisions of Article 9 of this Chapter apply to this Article, to the extent they do not conflict with this Article. (2008-165, s. 2.)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5 provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

§ 153A-210.2. (Expires July 1, 2013) Assessments.

(a) Projects. — The board of commissioners of a county may make special assessments as provided in this Article against benefited property within the county for the purpose of financing the capital costs of projects for which bonds may be issued under any of the following:

(1) G.S. 159-48(b)(17), sanitary sewer systems.
(2) G.S. 159-48(b)(19), storm sewers and flood control facilities.
(3) G.S. 159-48(b)(21), water systems.
(4) G.S. 159-48(b)(23), public transportation facilities.
(5) G.S. 159-48(c)(4), school facilities.
(6) G.S. 159-48(d)(5), streets and sidewalks.

(b) Costs. — The board of commissioners must determine a project's total estimated cost. In addition to the costs allowed under G.S. 153A-193, the costs may include any expenses allowed under G.S. 159-84. A preliminary assessment roll may be prepared before the costs are incurred based on the estimated cost of the project.

(c) Method. — The board of commissioners must establish an assessment method that will most accurately assess each lot or parcel of land according to the benefits conferred upon it by the project for which the assessment is made. In addition to the bases upon which assessments may be made under G.S. 153A-186, the board may select any other method designed to allocate the costs in accordance with benefits conferred. (2008-165, s. 2; 2008-187, s. 47.5(a).)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5 provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

Session Laws 2008-187, s. 47.5(a), makes the amendment of this section by that act contingent upon House Bill 1770, 2007 Regular Session, becoming law. HB 1770 was enacted as Session Laws 2008-165.

Effect of Amendments. — Session Laws 2008-187, s. 47.5(a), effective August 7, 2008. rewrote the last sentence in (b).

§ 153A-210.3. (Expires July 1, 2013) Petition required.

(a) Petition. — The board of commissioners may not impose a special assessment under this Article unless it receives a petition for the project to be financed by the assessment signed by at least a majority of the owners of real property to be assessed who must represent at least sixty-six percent (66%) of the assessed value of all real property to be assessed. The petition must include the following:

(1) A statement of the project proposed to be financed in whole or in part by the imposition of an assessment under this Article.
(2) An estimate of the cost of the project.
(3) An estimate of the portion of the cost of the project to be assessed.

(b) Petition Withdrawn. — The board of commissioners must wait at least 10 days after the public hearing on the preliminary assessment resolution before adopting a final assessment resolution. A petition submitted under subsection (a) of this section may be withdrawn if notice of petition withdrawal is given in writing to the board signed by at least a majority of the owners who signed the petition submitted under subsection (a) of this section representing at least fifty percent (50%) of the assessed value of all real property to be assessed. The board may not adopt a final assessment resolution if it receives a timely notice of petition withdrawal.

(c) Validity of Assessment. — No right of action or defense asserting the invalidity of an assessment on grounds that the county did not comply with this section may be asserted except in an action or proceeding begun within 90 days after publication of the notice of adoption of the preliminary assessment resolution. (2008-165, s. 2.)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

§ 153A-210.4. (Expires July 1, 2013) Financing a project for which an assessment is imposed.

A board of commissioners may provide for the payment of the cost of a project for which an assessment may be imposed under this Article solely from revenue bonds to be repaid from the assessments or from a combination of financing sources that include the revenue bonds. Other financing sources include general obligation bonds and general revenues. The assessment resolution must include the estimated cost of the project and the amount of the cost to be derived from revenue bonds and any other financing source. (2008-165, s. 2.)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

§ 153A-210.5. (Expires July 1, 2013) Payment of assessments by installments.

An assessment imposed under this Article is payable in annual installments. The board of commissioners must set the number of annual installments, which may not be more than 30. The installments are due on the date that property taxes are due. (2008-165, s. 2.)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

§ 153A-210.6. (Expires July 1, 2013) Revenue bonds.

(a) Authorization. — A board of commissioners that imposes an assessment under this Article may issue revenue bonds under Article 5 of Chapter 159 of the General Statutes to finance the project for which the assessment is imposed and use the proceeds of the assessment imposed as revenues pertaining to the project.

(b) Modifications. — This Article specifically modifies the authority of a county to issue revenue bonds under Article 5 of Chapter 159 of the General

Statutes by extending the authority in that Article to include a project for which an assessment may be imposed under this Article. In applying the provisions of Article 5, the following definitions apply:

(1) Revenue bond project. — Defined in G.S. 159-81(3). The term includes projects for which an assessment is imposed under this Article.

(2) Revenues. — Defined in G.S. 159-81(4). The term includes assessments imposed under this Article to finance a project allowed under this Article. (2008-165, s. 2.)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

ARTICLE 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

§ 153A-217. Definitions.

CASE NOTES

Definition of "Local Confinement Facility" Applicable to G.S. 90-95(e)(9). — Defendant, who was brought to the sheriff's department for booking, was clearly on the premises of a local confinement facility. State v. Moncree, — N.C. App. —, 655 S.E.2d 464, 2008 N.C. App. LEXIS 94 (2008).

§ 153A-221. Minimum standards.

(a) The Secretary shall develop and publish minimum standards for the operation of local confinement facilities and may from time to time develop and publish amendments to the standards. The standards shall be developed with a view to providing secure custody of prisoners and to protecting their health and welfare and providing for their humane treatment. The standards shall provide for:

(1) Secure and safe physical facilities;
(2) Jail design;
(3) Adequacy of space per prisoner;
(4) Heat, light, and ventilation;
(5) Supervision of prisoners;
(6) Personal hygiene and comfort of prisoners;
(7) Medical care for prisoners, including mental health, mental retardation, and substance abuse services;
(8) Sanitation;
(9) Food allowances, food preparation, and food handling;
(10) Any other provisions that may be necessary for the safekeeping, privacy, care, protection, and welfare of prisoners.

(b) In developing the standards and any amendments thereto, the Secretary shall consult with organizations representing local government and local law enforcement, including the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Sheriffs' Association, and the North Carolina Police Executives' Association. The

Secretary shall also consult with interested State departments and agencies, including the Department of Correction, the Department of Health and Human Services, the Department of Insurance, and the North Carolina Criminal Justice Education and Training Standards Commission, and the North Carolina Sheriffs' Education and Training Standards Commission.

(c) Before the standards or any amendments thereto may become effective, they must be approved by the Commission and the Governor. Upon becoming effective, they have the force and effect of law.

(d) Notwithstanding any law or rule to the contrary, each dormitory in a county detention facility may house up to 56 inmates as long as the dormitory provides all of the following:

(1) A minimum floor space of 70 square feet per inmate, including both the sleeping and dayroom areas.
(2) One shower per eight inmates, one toilet per eight inmates, one sink with a security mirror per eight inmates, and one water fountain.
(3) A telephone jack or other telephone arrangement provided within the dormitory.
(4) Space designed to allow a variety of activities.
(5) Sufficient seating and tables for all inmates.
(6) A way for officers to observe the entire area from the entrance.

This subsection applies only to those counties that have a population in excess of 600,000, according to the most recent decennial federal census. (1967, c. 581, s. 2; 1973, c. 476, ss. 128, 133, 138; c. 822, s. 1; 1983, c. 745, s. 6; c. 768, s. 20; 1991, c. 237, s. 1; 1997-443, s. 11A.118(a); 2008-194, s. 10(a), (b).)

Editor's Note. —
Session Laws 2008-194, s. 10(a), (b), effective August 8, 2008, has been codified as subsection (d) of this section at the direction of the Revisor of Statutes.

§ 153A-224. Supervision of local confinement facilities.

CASE NOTES

Claims Not Barred by Policy Exclusion. — In a wrongful death action arising from an incident at a county jail, although the sheriff claimed that sovereign immunity entitled him to summary judgment as a matter of law to the extent plaintiffs — the decedent's mother and the administrator of his estate, sought to recover damages in excess of the sheriff's official bond under G.S. 162-8 and G.S. 58-76-5, plaintiffs' claims were not barred by exclusions in the county's liability insurance under G.S. 153A-435; although the policy excluded coverage for claims arising from criminal behavior and plaintiffs claimed the sheriff was negligent by violating G.S. 153A-224 — a Class 1 misdemeanor, other grounds were alleged for the sheriff's negligence. Myers v. Bryant, — N.C. App. —, 655 S.E.2d 882, 2008 N.C. App. LEXIS 215 (Feb. 5, 2008).

Article 15.

Public Enterprises.

Part 1. General Provisions.

§ 153A-274. Public enterprise defined.

Editor's Note. —
Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc., for

the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

ARTICLE 16.

County Service Districts; County Research and Production Service Districts; County Economic Development and Training Districts.

Part 1. County Service Districts.

§ 153A-301. Purposes for which districts may be established.

(a) The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Beach erosion control and flood and hurricane protection works.
(2) Fire protection.
(3) Recreation.
(4) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
(5) Solid waste collection and disposal systems.
(6) Water supply and distribution systems.
(7) Ambulance and rescue.
(8) Watershed improvement projects, including but not limited to watershed improvement projects as defined in Chapter 139 of the General Statutes; drainage projects, including but not limited to the drainage projects provided for by Chapter 156 of the General Statutes; and water resources development projects, including but not limited to the federal water resources development projects provided for by Article 21 of Chapter 143 of the General Statutes.
(9) Cemeteries.
(10) Law enforcement if all of the following apply:
    a. The population of the county is over 500,000 according to the most recent federal decennial census.
    b. The county has an interlocal agreement with a city in the county under which the city provides law enforcement services in the entire unincorporated area of the county.
    c. Repealed by Session Laws 2008-134, s. 76 (c), effective July 28, 2008.
(11) Services permitted under Article 24 of this Chapter if the district is subject to G.S. 153A-472.1.

(b) The General Assembly finds that coastal-area counties have a special problem with lack of maintenance of platted rights-of-way, resulting in ungraded sand travelways deviating from the original rights-of-way and encroaching on private property, and such cartways exhibit poor drainage and are blocked by junk automobiles.

(c) To address the problem described in subsection (b), the board of commissioners of any coastal-area county as defined by G.S. 113A-103(2) may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Removal of junk automobiles; and
(2) Street maintenance.

(d) The board of commissioners of a county that contains a protected mountain ridge, as defined by G.S. 113A-206(6), may define any number of service districts, composed of subdivision lots within one or more contiguous subdivisions that are served by common public roads, to finance for the district the maintenance of such public roads that are either located in the district or provide access to some or all lots in the district from a State road, where some portion of those roads is not subject to compliance with the minimum standards of the Board of Transportation set forth in G.S. 136-102.6. The service district or districts created shall include only subdivision lots within the subdivision, and one or more additional contiguous subdivisions, where the property owners' association, whose purpose is to represent these subdivision lots, agrees to be included in the service district. For subdivision lots in an additional contiguous subdivision or for other adjacent or contiguous property to be annexed according to G.S. 153A-303, the property owners' association representing the subdivision or property to be annexed must approve the annexation. For the purposes of this subsection: (i) "subdivision lots" are defined as either separate tracts appearing of record upon a recorded plat, or other lots, building sites, or divisions of land for sale or building development for residential purposes; and (ii) "public roads" are defined as roads that are in actual open use as public vehicular areas, or dedicated or offered for dedication to the public use as a road, highway, street, or avenue, by a deed, grant, map, or plat, and that have been constructed and are in use by the public, but that are not currently being maintained by any public authority.

(e) The board of commissioners of a county that adjoins or contains a lake, river, or tributary of a river or lake that has an identified noxious aquatic weed problem may define any number of noxious aquatic weed control service districts composed of property that is contiguous to the water or that provides direct access to the water through a shared, certified access site to the water. As used in this subsection, the term "noxious aquatic weed" is any plant organism identified by the Secretary of Environment and Natural Resources under G.S. 113A-222 or regulated as a plant pest by the Commissioner of Agriculture under Article 36 of Chapter 106 of the General Statutes. (1973, c. 489, s. 1; c. 822, s. 2; c. 1375; 1979, c. 595, s. 1; c. 619, s. 6; 1983 (Reg. Sess., 1984), c. 1078, s. 1; 1989, c. 620; 1993, c. 378, s. 1; 1995, c. 354, s. 1; c. 434, s. 1; 1997-456, s. 24; 2005-433, s. 10(b); 2005-440, s. 1; 2008-134, s. 76(c).)

Effect of Amendments. — Session Laws 2008-134, s. 76(c), effective July 28, 2008, deleted subdivision (a)(10)c.

§ 153A-304.1. Reduction in district after annexation.

(a) When the whole or any portion of a county service district organized for fire protection purposes under G.S. 153A-301(2) has been annexed by a municipality furnishing fire protection to its citizens, and the municipality had not agreed to allow territory within it to be within the county service district under G.S. 153A-302(a), then such county service district or the portion thereof so annexed shall immediately thereupon cease to be a county service district or a portion of a county service district; and such district or portion thereof so annexed shall no longer be subject to G.S. 153A-307 authorizing the board of county commissioners to levy and collect a tax in such district for the purpose of furnishing fire protection therein.

(b) Nothing in this section prevents the board of county commissioners from levying and collecting taxes for fire protection in the remaining portion of a county service district not annexed by a municipality.

(c) When all or part of a county service district is annexed, and the effective date of the annexation is a date other than a date in the month of June, the amount of the county service district tax levied on property in the district for the fiscal year in which municipal taxes are prorated under G.S. 160A-58.10 shall be multiplied by the following fraction: the denominator shall be 12 and the numerator shall be the number of full calendar months remaining in the fiscal year following the day on which the annexation becomes effective. For each owner, the product of the multiplication is the prorated fire protection payment. The finance officer of the city shall obtain from the assessor or tax collector of the county where the annexed territory was located a list of the owners of property on which fire protection district taxes were levied in the territory being annexed, and the city shall, no later than 90 days after the effective date of the annexation, pay the amount of the prorated fire protection district payment to the owners of that property. Such payments shall come from any funds not otherwise restricted by law.

(d) Whenever a city is required to make fire protection district tax payments by subsection (c) of this section, and the city has paid or has contracted to pay to a rural fire department funds under G.S. 160A-37.1 or G.S. 160A-49.1, the county shall pay to the city from funds of the county service district an amount equal to the amount paid by the city (or to be paid by the city) to a rural fire department under G.S. 160A-37.1 or G.S. 160A-49.1 on account of annexation of territory in the county service district for the number of months in that fiscal year used in calculating the numerator under subsection (c) of this section; provided that the required payments by the county to the city shall not exceed the total of fire protection district payments made to taxpayers in the district on account of that annexation. (1987, c. 711, s. 1; 2008-134, s. 76(b).)

Effect of Amendments. — Session Laws 2008-134, s. 76(b), effective July 28, 2008, substituted "assessor" for "tax supervisor" in the third sentence of subsection (c).

§ 153A-304.4. Reduction in law enforcement service district after annexation.

When any portion of a county law enforcement service district organized under G.S. 153A-301(10) is annexed by a municipality, and the effective date of the annexation is a date other than a date in the month of June, the amount of the county law enforcement service district tax levied on each parcel of real property in the district for the fiscal year in which municipal taxes are prorated under G.S. 160A-58.10 shall be multiplied by the following fraction: the denominator shall be 12 and the numerator shall be the number of full calendar months remaining in the fiscal year following the day on which the annexation becomes effective. For each parcel of real property in the portion of the district that is annexed, the product of the multiplication is the amount of the law enforcement service district tax to be refunded if the taxes have been paid, or released if the taxes have not been paid. The finance officer of the county shall obtain from the assessor or tax collector of the county a list of the owners of the real property on which law enforcement service district taxes were levied in the territory annexed, and the county shall pay the refund amount, if applicable, to the owner as shown on the records of the tax assessor of the real property as of the January 1 immediately preceding the date of the refund. Refund payments shall come from any funds not otherwise restricted by law. (2008-134, s. 76(a).)

Editor's Note. — Session Laws 2008-134, s. 76(a), made this section applicable to annexations in fiscal year 2006-2007 or a subsequent fiscal year.

§ 153A-309.3. Rate limitation in certain districts — Fire protection service districts for industrial property.

(a) Any area in a service district for fire protection established pursuant to G.S. 153A-301(a)(2) may be removed from that district by resolution of the county board of commissioners and a new service district simultaneously created for the area so removed if the area is an industrial facility (and appurtenant land and structures):

(1) Subject to a contract not to annex by a municipality under which the owner of the industrial property is obligated to make payments in lieu of taxes equal to or in excess of fifty percent (50%) of the taxes such industry would pay if it were annexed and is current in making such payments.

(2) Actively served by an industrial fire brigade which meets the standards of the National Fire Protection Association and the requirements of the North Carolina Occupational Safety and Health Standards for General Industry (Title 29 Code of Federal Regulations Part 1910 incorporated by reference in 13 NCAC 07F.0101) for industrial fire brigades.

(b) Prior to removing such area from the service district and simultaneously creating a new district of that same area, the board shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least two weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be removed and a new district created. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(c) In any district created under this section from area removed from an existing district, the county may not levy or collect property taxes for the purpose of financing fire protection pursuant to this Article in excess of a rate of three and one-half cents (3.5¢) on each one hundred dollars ($100.00) of property valuation subject to taxation.

(d) If any district established under this section ceases to meet the tests established by subdivisions (a)(1) and (a)(2) of this section, the board of commissioners may by resolution abolish that district and annex that territory to the district from which it was removed after a public hearing under the same provisions as set out in subsection (b) of this section.

(e) Any resolutions adopted under this section become effective the first day of July following their adoption. (2005-281, s. 1.)

Editor's Note. —
This section has been set out in the supplement to correct a publishing error in the main volume.

Article 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-325. Submission of statement concerning improvements.

Editor's Note. — Session Laws 2008-65, s. 1, effective September 1, 2008, repealed Session Laws 1983, c. 614, s. 5, which had provided that the amendments by the 1983 act would not apply to Wilson, Nash and Edgecombe Counties.

Part 3. Zoning.

§ 153A-340. Grant of power.

CASE NOTES

Owner's Lacked Standing to Appeal Conditional Use Permit. — Dismissal of owners' petition seeking review of a board's decision granting buyers' application for a conditional use permit for property was proper because standing was required before a petitioner was allowed to seek review of a special use permit or conditional use permit, and because the owners failed to allege any damages whatsoever, they lacked standing. Casper v. Chatham County, 186 N.C. App. 456, 651 S.E.2d 299, 2007 N.C. App. LEXIS 2212 (2007).

Applied in Laurel Valley Watch, Inc. v. Mt. Enters. of Wolf Ridge, LLC, — N.C. App. —, 665 S.E.2d 561, 2008 N.C. App. LEXIS 1629 (2008).

Cited in Davidson County Broad., Inc. v. Rowan County Bd. of Comm'rs, 186 N.C. App. 81, 649 S.E.2d 904, 2007 N.C. App. LEXIS 1977 (2007).

§ 153A-345. Board of adjustment.

CASE NOTES

Standing. —

Dismissal of owners' petition seeking review of a board's decision granting buyers' application for a conditional use permit for property was proper because standing was required before a petitioner was allowed to seek review of a special use permit or conditional use permit, and because the owners failed to allege any damages whatsoever, they lacked standing. Casper v. Chatham County, 186 N.C. App. 456, 651 S.E.2d 299, 2007 N.C. App. LEXIS 2212 (2007).

Where a county zoning officer granted a building permit to a church, an adjacent property owner lacked standing to appeal from the zoning officer to the zoning board under G.S. 153A-345(b) or 1947 N.C. Sess. Laws, ch. 677, § 33, because the property owner did not allege or show the requisite special damages to assert standing as a person aggrieved since the application did not allege that the zoning decisions had decreased the value of the property owner's property or would do so in the future. Smith v. Forsyth County Bd. of Adjustment, — N.C. App. —, 652 S.E.2d 355, 2007 N.C. App. LEXIS 2272 (2007).

Applied in Laurel Valley Watch, Inc. v. Mt. Enters. of Wolf Ridge, LLC, — N.C. App. —, 665 S.E.2d 561, 2008 N.C. App. LEXIS 1629 (2008).

§ 153A-348. Statute of limitations.

CASE NOTES

Equitable Estoppel did not Apply. — Because a non-profit corporation's members had notice that the County had rezoned 12 acres to I-D to allow for the development of an airport, and the evidence did not show that the members reasonably relied on the minutes in filing the lawsuit after the expiration of the statute of limitations, the doctrine of equitable estoppel did not apply. Laurel Valley Watch, Inc. v. Mt. Enters. of Wolf Ridge, LLC, — N.C. App. —, 665 S.E.2d 561, 2008 N.C. App. LEXIS 1629 (2008).

Part 4. Building Inspection.

§ 153A-357. Permits.

(a) No person may commence or proceed with:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building;
(2) The installation, extension, or general repair of any plumbing system;
(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system; or
(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment

without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a Class 1 misdemeanor.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion and sedimentation control plan has been approved by the Sedimentation Pollution Control Commission pursuant to

G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity.

(d) **(Effective April 1, 2009)** No permit shall be issued pursuant to subsection (a) of this section for any land-disturbing activity that is subject to, but does not comply with, the requirements of G.S. 113A-71. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1981, c. 677, s. 2; 1983, c. 377, s. 2; c. 614, s. 2; 1987 (Reg. Sess., 1988), c. 1000, s. 1; 1993, c. 539, s. 1065; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 741, s. 1; 2002-165, s. 2.19; 2008-198, s. 8(c).)

Editor's Note. — Session Laws 2008-65, s. 1, effective September 1, 2008, repealed Session Laws 1983, c. 614, s. 5, which had provided that the amendments by the 1983 act would not apply to Wilson, Nash and Edgecombe Counties.

Session Laws 2008-198, s. 12 provided, in part, that subsection 8(c) of the act applies to building permits issued pursuant to G.S. 153A-357 and G.S. 160A-417 for which applications are received on or after April 1, 2009.

Effect of Amendments. — Session Laws 2008-198, s. 8(c), effective April 1, 2009, added subsection (d). See Editor's note for applicability.

§ 153A-391. Creation; admission of new members.

Editor's Note. — Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc., for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Article 23.

Miscellaneous Provisions.

§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.

CASE NOTES

Immunity Not Waived Where Action Excluded from Coverage. —

Because the administrators did not waive the sovereign immunity in G.S. 153A-435 through the purchase of a liability insurance policy, that excluded coverage for negligence actions, they were entitled to summary judgment. Patrick v. Wake County Dep't of Human Servs., — N.C. App. —, 655 S.E.2d 920, 2008 N.C. App. LEXIS 197 (Feb. 5, 2008).

Allegations of Complaint. —

Trial court properly denied motions filed by a county, the county department of social services (DSS), DSS supervisory employees, and social workers to dismiss a father's claims against them in their official capacities because if they purchased liability insurance as the father alleged, they could be liable for negligent or intentional actions carried out in the performance of their duties. Christmas v. Cabarrus County, — N.C. App. —, 664 S.E.2d 649, 2008 N.C. App. LEXIS 1532 (2008).

Damage Limitations. —

In a wrongful death action arising from an incident at a county jail, although the sheriff claimed that sovereign immunity entitled him to summary judgment as a matter of law to the extent plaintiffs — the decedent's mother and the administrator of his estate, sought to recover damages in excess of the sheriff's official bond under G.S. 162-8 and G.S. 58-76-5, plaintiffs' claims were not barred by exclusions in the county's liability insurance under G.S. 153A-435; although the policy excluded coverage for claims arising from criminal behavior and plaintiffs claimed the sheriff was negligent by violating G.S. 153A-224 — a Class 1 misdemeanor, other grounds were alleged for the sheriff's negligence. Myers v. Bryant, — N.C. App. —, 655 S.E.2d 882, 2008 N.C. App. LEXIS 215 (Feb. 5, 2008).

§ 153A-454. Stormwater control.

Implementation of Federal Phase II Stormwater Management Requirements and Protection of Water Quality, as Recommended by Environmental Review Commission. — For requirements necessitated by temporary implementation of federal Phase II Stormwater Management and the Stormwater Management Rules, see notes regarding Session Laws 2006-246 under G.S. 143-214.7.

Improvements in the Management of Stormwater in the Coastal Counties in Order to Protect Water Quality — Supercession of Rule. — See notes regarding Session Laws 2008-211, as amended by Session Laws 2008-198, ss. 5 and 6(a), under G.S. 143-214.7.

Chapter 158.

Local Development.

Article 2.

Economic Development Commissions.

Sec.
158-12.1. Commission funds secured.

Article 1.

Local Development Act of 1925.

§ 158-7.1. Local development.

CASE NOTES

Permissible Governmental Action. — State and local government's conduct in granting economic incentives to locate in North Carolina fostered the permissible goal of encouraging economic development in order to benefit the public, and, thus, the taxpayers could not show that their conduct in providing incentives such as tax credits to the business to locate its computer manufacturing facility in the county violated G.S. 158-7.1. Blinson v. State, 186 N.C. App. 328, 651 S.E.2d 268, 2007 N.C. App. LEXIS 2191 (2007).

Article 2.

Economic Development Commissions.

§ 158-12.1. Commission funds secured.

The Western North Carolina Regional Economic Development Commission, Research Triangle Regional Partnership, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, North Carolina's Northeast Commission, North Carolina's Eastern Region Development Commission, and Carolinas Partnership, Inc., may deposit money at interest in any bank, savings and loan association, or trust company in this State in the form of savings accounts, certificates of deposit, or such other forms of time deposits as may be approved for county governments. Investment deposits and money deposited in an official depository or deposited at interest shall be secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in accordance with this section, no public officer or employee may be held liable for any losses sustained by an institution because of the default or insolvency of the depository. This section applies to the regional economic development commissions listed in this section only for as long as the commissions are receiving State funds. (2000-67, s. 14.9; 2005-364, s. 3; 2007-93, s. 4; 2008-134, s. 77.)

Effect of Amendments. — Session Laws 2008-134, s. 77, effective July 28, 2008, substituted "Research Triangle Regional Partnership" for "Research Triangle Regional Commission" near the beginning.

Chapter 159.

Local Government Finance.

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

ARTICLE 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

§ 159-7. Short title; definitions; local acts superseded.

CASE NOTES

Applied in Holt v. Albemarle Reg'l Health Servs. Bd., — N.C. App. —, 655 S.E.2d 729, 2008 N.C. App. LEXIS 95 (2008).

SUBCHAPTER IV. LONG-TERM FINANCING.

ARTICLE 5.

Revenue Bonds.

§ 159-80. Short title; repeal of local acts.

Cross References. — As to modification of authority of a city to issue revenue bonds under this Article, see G.S. 160A-239.6.

§ 159-84. Authorization of revenue bonds.

Cross References. — As to special assessmemts for critical infrastructure needs for counties, see Article 9A of Chapter 153A, G.S. 153A-210.1 et seq. As to special assessments for critical infrastructure needs for cities, see Article 10A of Chapter 160A, G.S. 160A-239.1 et seq.

Chapter 159B.

Joint Municipal Electric Power and Energy Act.

Article 3.

Joint Municipal Assistance Agencies.

Sec.
159B-44. General powers of joint municipal assistance agencies and municipalities.

ARTICLE 3.

Joint Municipal Assistance Agencies.

§ 159B-44. General powers of joint municipal assistance agencies and municipalities.

Each joint municipal assistance agency shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including, but without limiting the generality of the foregoing, the rights and powers:

(1) To establish and from time to time modify a schedule of dues and assessments and to provide that the payment thereof when due shall be prerequisite to voting at any meeting and participation in and enjoyment of rights or benefits of the joint municipal assistance agency;

(2) To appropriate for the purposes of the joint municipal assistance agency the funds derived from dues and assessments, and from any other source;

(3) To provide aid and assistance to any one or more municipalities, and to act for or on behalf of any one or more municipalities, in any activity related to the construction, ownership, maintenance, expansion or operation of an electric system, upon such terms, conditions and considerations as may be agreed to between the municipalities and the joint municipal assistance agency;

(4) To provide aid and assistance to any one or more joint agencies, and to act for or on behalf of any one or more joint agencies in the exercise of any power, function, right, privilege or immunity granted by Article 2 of this Chapter, upon such terms, conditions and considerations as may be agreed to between the joint agency and the joint municipal assistance agency;

(5) To provide property and services to any one or more municipalities or joint agencies upon such terms, conditions and considerations as may be agreed to between the municipalities or joint agency and the joint municipal assistance agency;

(6) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(7) To adopt an official seal and alter the same at pleasure;

(8) To acquire and maintain an administrative office building or office at such place or places as it may determine, which building or office may be used or owned together with any joint agency or agencies, municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined;

(9) To sue and be sued in its own name, and to plead and be impleaded;

(10) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(11) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

(12) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein; provided, however, that property acquired by a joint municipal assistance agency from a municipality without consideration or for a consideration other than the fair market value thereof as determined by the governing board of the municipality may only be disposed of in accordance with the procedures set forth in Article 12 of Chapter 160A of the General Statutes;

(13) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint municipal assistance agency, including contracts with municipalities, joint agencies, persons, firms, corporations and others, provided, however, that such contracts shall not unreasonably preclude the municipality or joint agency from contracting with other parties in order to achieve economy, adequacy and reliability in the operation of their electric systems;

(14) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint municipal assistance agency and to fix and pay their compensation from funds available to the joint municipal assistance agency therefor; and

(15) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint municipal assistance agency herein.

Any municipality or joint agency is authorized to appropriate and pay funds to a joint municipal assistance agency and to enter into contracts or arrangements with a joint municipal assistance agency for the purposes and in the execution of the functions and powers of the municipality or joint agency.

Joint municipal assistance agencies shall comply with Article 8 of Chapter 143 of the General Statutes respecting acquisition or construction of property to the same extent required of municipalities; provided, however, that Article 8 of Chapter 143 of the General Statutes shall not apply to a municipality, joint municipal assistance agency or joint agency in transactions between a joint municipal assistance agency and a municipality or joint agency involving the transfer or construction of property.

Property owned by a joint municipal assistance agency or jointly owned by municipalities or joint agencies and joint municipal assistance agencies shall be exempt from property taxes; provided, however, that each joint municipal assistance agency shall, in lieu of property taxes, pay to any governmental agency authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of such agency if such property were otherwise subject to valuation and assessment by the Department of Revenue. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. (1983, c. 609, s. 7; 1995, c. 412, s. 24; 2008-38, s. 1.)

Effect of Amendments. — Session Laws 2008-38, s. 1, effective July 1, 2008, deleted "for a period not exceeding three years" following "execute contracts" in subdivision (13).

Chapter 159G.

Water Infrastructure.

Article 1.

General Provisions.

Sec.
159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking Water Reserve.

ARTICLE 1.

General Provisions.

§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking Water Reserve.

The criteria in this section apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Division of Water Quality and the Division of Environmental Health must each establish a system of assigning points to applications based on the following criteria:

(1) Public necessity. — An applicant must explain how the project promotes public health and protects the environment. A project that improves a system that is not in compliance with permit requirements or is under orders from the Department, enables a moratorium to be lifted, or replaces failing septic tanks with a wastewater collection system has priority.

(2) Effect on impaired waters. — A project that improves designated impaired waters of the State has priority.

(3) Efficiency. — A project that achieves efficiencies in meeting the State's water infrastructure needs or reduces vulnerability to drought consistent with Part 2A of Article 21 of Chapter 143 of the General Statutes by one of the following methods has priority:

  a. The combination of two or more wastewater or public water systems into a regional wastewater or public water system by merger, consolidation, or another means.

  b. Conservation or reuse of water, including bulk water reuse facilities and waterlines to supply reuse water for irrigation and other approved uses.

  c. Construction of an interconnection between water systems intended for use in drought or other water shortage emergency.

  d. Repair or replacement of leaking waterlines.

  e. Replacement of meters and installation of new metering systems.

(4) Comprehensive land-use plan. — A project that is located in a city or county that has adopted or has taken significant steps to adopt a comprehensive land-use plan under Article 18 of Chapter 153A of the General Statutes or Article 19 of Chapter 160A of the General Statutes has priority over a project located in a city or county that has not adopted a plan or has not taken steps to do so. The existence of a plan has more priority than steps taken to adopt a plan, such as adoption of a zoning ordinance. A plan that exceeds the minimum State standards for protection of water resources has more priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. A land-use plan is not considered a comprehensive land-use plan unless it has

provisions that protect existing water uses and ensure compliance with water quality standards and classifications in all waters of the State affected by the plan.

(5) Flood hazard ordinance. — A project that is located in a city or county that has adopted a flood hazard prevention ordinance under G.S. 143-215.54A has priority over a project located in a city or county that has not adopted an ordinance. A plan that exceeds the minimum standards under G.S. 143-215.54A for a flood hazard prevention ordinance has more priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. If no part of the service area of a project is located within the 100-year floodplain, the project has the same priority under this subdivision as if it were located in a city or county that has adopted a flood hazard prevention ordinance. The most recent maps prepared pursuant to the National Flood Insurance Program or approved by the Department determine whether an area is within the 100-year floodplain.

(6) Sound management. — A project submitted by a local government unit that has demonstrated a willingness and ability to meet its responsibilities through sound fiscal policies and efficient operation and management has priority.

(7) Capital improvement plan. — A project that implements the applicant's capital improvement plan for the wastewater system or public water system it manages has priority over a project that does not implement a capital improvement plan. To receive priority, a capital improvement plan must set out the applicant's expected water infrastructure needs for at least 10 years.

(8) Coastal habitat protection. — A project that implements a recommendation of a Coastal Habitat Protection Plan adopted by the Environmental Management Commission, the Coastal Resources Commission, and the Marine Fisheries Commission pursuant to G.S. 143B-279.8 has priority over other projects that affect counties subject to that Plan. (2005-454, s. 3; 2008-143, s. 15.)

Editor's Note. — Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

Session Laws 2008-143, s. 21, provides in part that Water Shortage Response Plans revised to comply with G.S. 143-355.2 shall be submitted no later than July 1, 2009.

Effect of Amendments. — Session Laws 2008-143, s. 15, effective July 31, 2008, in subdivision (3), inserted "or reduces vulnerability to drought consistent with Part 2A of Article 21 of Chapter 143 of the General Statutes" in the introductory language; in subdivision (3)b, added "including bulk water reuse facilities and waterlines to supply reuse water for irrigation and other approved uses"; and added subdivisions (3)c through (3)e.

Article 4.

State Water Infrastructure Commission.

§ 159G-66. Duties of the Commission.

Editor's Note. — Session Laws 2008-143, s. 17, provides: "The State Water Infrastructure Commission, in consultation with the Department of Environment and Natural Resources, the School of Government at the University of North Carolina at Chapel Hill, the North Carolina Utilities Commission, the Public Staff of the North Carolina Utilities Commission, and the Local Government Commission, shall develop guidelines for water rate structures that are adequate to pay the cost of maintaining, repairing, and operating the system, including payment of principal and interest on indebtedness incurred for maintenance or improvement of the water system. The guidelines shall also consider the effect of water rates on water conservation and recommend rate structures that support water conservation. Copies of the guidelines shall be made available to the Department of Environment and Natural Resources, the North Carolina Utilities Commission, and to all local government water systems and large community water systems, as defined in G.S. 143-350. The Commission shall report to the Environmental Review Commission on its progress in developing the guidelines no later than January 1, 2009."

Chapter 160A.

Cities and Towns.

Article 4A.

Extension of Corporate Limits.

Part 4. Annexation of Noncontiguous Areas.

Sec.
160A-58.1. Petition for annexation; standards.

Article 7.

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160A-168. Privacy of employee personnel records.

Article 8.

Delegation and Exercise of the General Police Power.

160A-200. Annual notice to chronic violators of overgrown vegetation ordinances.

Article 9.

Taxation.

160A-208.1. Disclosure of certain information prohibited.
160A-215. Uniform provisions for room occupancy taxes.
160A-215.2. (For effective date, see note) Heavy equipment gross receipts tax in lieu of property tax.

Article 10A.

Special Assessments for Critical Infrastructure Needs

(Expires July 1, 2013).

160A-239.1. (Expires July 1, 2013) Purpose.
160A-239.2. (Expires July 1, 2013) Assessments.

Sec.
160A-239.3. (Expires July 1, 2013) Petition required.
160A-239.4. (Expires July 1, 2013) Financing a project for which an assessment is imposed.
160A-239.5. (Expires July 1, 2013) Payment of assessments by installments.
160A-239.6. (Expires July 1, 2013) Revenue bonds.

Article 14A.

Municipal Firefighters.

160A-295. (Contingent effective date — see Editor's note) Definitions.
160A-295.1. (Contingent effective date — see Editor's note) Municipal firefighters; hours of labor; overtime pay.
160A-295.2. (Contingent effective date — see Editor's note) Authority of Department of Labor.
160A-295.3. (Contingent effective date — see Editor's note) Applicability.

Article 15.

Streets, Traffic and Parking.

160A-300.5. Regulation of golf carts on streets in certain localities.

Article 19.

Planning and Regulation of Development.

160A-383.4. Local energy efficiency incentives.

Part 5. Building Inspection.

160A-417. Permits.
160A-425.1. Unsafe buildings condemned in certain localities.
160A-432. Enforcement.

ARTICLE 1.

Definitions and Statutory Construction.

§ 160A-1. Application and meaning of terms.

Editor's Note. —
Session Laws 2008-181, ss. 36.1 through 36.6, provide:

"36.1. There is created the Legislative Study Commission on Urban Growth and Infrastructure Issues. The purpose of the Commission is to determine what measures the General Assembly may take to foster regional water resource and transportation planning, incentive-based local land use planning, and more responsive and cost-effective planning to accommodate rapid population growth in North

Carolina's urban areas.

"36.2. The Commission shall consist of 14 members as follows:

"(1) Five members appointed by the Speaker of the House of Representatives.

"(2) Five members appointed by the President Pro Tempore of the Senate.

"(3) Four members representing North Carolina's urban areas appointed jointly by the Speaker of the House of Representatives and the President Pro Tempore of the Senate, including at least one member from Wake, Durham, or Orange County, one member from Forsyth or Guilford County, and one member from Mecklenburg County.

"36.3. The Speaker of the House of Representatives shall designate one Representative as cochair, and the President Pro Tempore of the Senate shall designate one Senator as cochair. Vacancies on the Commission shall be filled by the same appointing authority that made the initial appointment.

"36.4. The Commission shall study the following issues relating to urban growth and infrastructure:

"(1) Options for fostering regional planning for water and transportation infrastructure.

"(2) Strategies (including additional local land use regulatory tools) for encouraging the use of incentive-based planning by urban area local governments.

"(3) Strategies to help urban communities maximize the benefits of growth and cope with the challenges presented by rapid growth in population, school enrollment, vehicle miles traveled on urban roads and highways, and related demands for other public services while preserving a viable economic climate and building greater regional cooperation.

"(4) Any other matters the Commission considers necessary in furtherance of the purpose for which it is established.

"36.5. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building.

"With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. If the Commission hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services.

"All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

"The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission.

"36.6. The Commission shall report the results of its study and its recommendations to the 2009 General Assembly upon its convening."

Article 4A.

Extension of Corporate Limits.

Part 1. Extension by Petition.

§ 160A-29. Map of annexed area, copy of ordinance and election results recorded in the office of register of deeds.

Editor's Note. — Session Laws 2008-181, ss. 46.1 through 46.4, established the Joint Legislative Study Commission, on Municipal Annexation. The act provided for Commission membership, vacancies, powers and duties, meetings, staff, expenses, and issues that may be examined by the Commission as part of the study. The act also provided that the Commission would terminate upon the earlier of the filing of its final report or the convening of the 2009 General Assembly.

Part 2. Annexation by Cities of Less Than 5,000.

§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

A second public hearing after amendment is not required, etc.
There is no requirement that a second public hearing be held on an amended annexation proposal, when that amendment is adopted to achieve compliance with G.S. 160A-35, and G.S. 160A-35 is the corollary to G.S. 160A-47, with the only significant difference in these statutes being that G.S. 160A-35 applies to cities less than 5,000 and G.S. 160A-47 applies to cities of 5,000 or more. Arnold v. City of Asheville, — N.C. App. —, 652 S.E.2d 40, 2007 N.C. App. LEXIS 2250 (2007).

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

III. Plans for Extending Services.
  B. Police and Fire Protection.

III. PLANS FOR EXTENDING SERVICES.

B. Police and Fire Protection.

Full Compliance as to Police and Fire Protection Shown. —
When a city proposed to annex certain land, the city's proposal for the extension of police services to the annexed land met the requirements of G.S. 160A-47 because the plan addressed the level of services currently provided in the city and committed to provide substantially the same level of services to the annexed land, and this was all that the applicable statute required. Arnold v. City of Asheville, — N.C. App. —, 652 S.E.2d 40, 2007 N.C. App. LEXIS 2250 (2007).

§ 160A-48. Character of area to be annexed.

CASE NOTES

Character of areas which may properly be annexed, etc.
City proposing to annex certain land substantially complied with G.S. 160A-48 because land improperly classified as residential should have been classified as "non-urban," as the land met no qualifications to be classified as urban, making G.S. 160A-48(c) inapplicable, as was also true with certain other undeveloped land, and making the classification of this land under G.S. 160A-48(d) proper, which meant the land did not have to qualify under G.S. 160A-48(c), so the land was correctly excluded from calculations of land qualifying for annexation under G.S. 160A-48(c) and, as a result, the total land qualified for annexation under G.S. 160A-48(c)(3), applying the use/subdivision test. Arnold v. City of Asheville, — N.C. App. —, 652 S.E.2d 40, 2007 N.C. App. LEXIS 2250 (2007).

§ 160A-49. Procedure for annexation.

CASE NOTES

Public Informational Meeting. —
When a city proposing a certain annexation amended the annexation ordinance by excluding a certain parcel from the ordinance, no

second public hearing was required, under G.S. 160A-49(e), because, with the only change to the ordinance being the deletion of one lot and no change in the subsections of G.S. 160A-48 under which the city sought annexation, there was no substantial change to the ordinance, necessitating notice. Arnold v. City of Asheville, — N.C. App. —, 652 S.E.2d 40, 2007 N.C. App. LEXIS 2250 (2007).

§ 160A-50. Appeal.

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in In re Summons Issued to Ernst & Young, LLP, — N.C. App. —, 663 S.E.2d 921, 2008 N.C. App. LEXIS 1472 (Aug. 5, 2008).

§ 160A-53. Definitions.

CASE NOTES

"Used for Residential Purposes." — Under G.S. 160A-53(2), "used for residential purposes" means any lot or tract five acres or less in size on which is constructed a habitable dwelling unit, for purposes of an annexation ordinance. Arnold v. City of Asheville, — N.C. App. —, 652 S.E.2d 40, 2007 N.C. App. LEXIS 2250 (2007).

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58.1. Petition for annexation; standards.

(a) Upon receipt of a valid petition signed by all of the owners of real property in the area described therein, a city may annex an area not contiguous to its primary corporate limits when the area meets the standards set out in subsection (b) of this section. The petition need not be signed by the owners of real property that is wholly exempt from property taxation under the Constitution and laws of North Carolina, nor by railroad companies, public utilities as defined in G.S. 62-3(23), or electric or telephone membership corporations.

(b) A noncontiguous area proposed for annexation must meet all of the following standards:

(1) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.

(2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city, except as set forth in subsection (b2) of this section.

(3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon.

(b1) Repealed by Session Laws 2004-203, ss. 13(a) and 13(d), effective August 17, 2004.

(b2) A city may annex a noncontiguous area that does not meet the standard set out in subdivision (b)(2) of this section if the city has entered into an annexation agreement pursuant to Part 6 of this Article with the city to which a point on the proposed satellite corporate limits is closer and the agreement states that the other city will not annex the area but does not say that the annexing city will not annex the area. The annexing city shall comply with all other requirements of this section.

(c) The petition shall contain the names, addresses, and signatures of all owners of real property within the proposed satellite corporate limits (except owners not required to sign by subsection (a)), shall describe the area proposed for annexation by metes and bounds, and shall have attached thereto a map showing the area proposed for annexation with relation to the primary corporate limits of the annexing city. When there is any substantial question as to whether the area may be closer to another city than to the annexing city, the map shall also show the area proposed for annexation with relation to the primary corporate limits of the other city. The city council may prescribe the form of the petition.

(d) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested rights shall be terminated. (1973, c. 1173, s. 2; 1989 (Reg. Sess., 1990), c. 996, s. 4; 1997-2, s. 1; 2001-37, s. 1; 2001-72, s. 1; 2001-438, s. 1; 2002-121, s. 1; 2003-30, s. 1; 2004-203, s. 13(a), (c); 2004-57, s. 1; 2004-99, s. 1; 2004-203, ss. 13(a)-(d); 2005-52, s. 1; 2005-71, s. 1; 2005-79, s. 1; 2005-173, s. 1; 2005-433, s. 9; 2006-62, s. 1; 2006-122, s. 1; 2006-130, s. 1; 2007-17, s. 1; 2007-26, ss. 1, 2(a); 2007-62, s. 1; 2007-225, s. 1; 2007-311, s. 1; 2007-342, s. 1; 2008-24, s. 1; 2008-30, s. 1.)

Local Modification. — Brunswick: 2001-478, s. 1 (as to subdivision (b)(2)); Municipalities located wholly or partly in Guilford: 1987 (Reg. Sess., 1988), c. 1009, s. 6; Union: 2003-321, s. 1; city of Asheboro: 1998-203, s. 1; city of Asheville: 2005-139, s. 3 (applicable to petitions for annexation received on or after June 30, 2005); city of Brevard: 1987, c. 254, s. 2; 2001-105, s. 2 (as to subdivision (b)(5)) city of Durham: 1987, c. 606; 2007-269, s. 1.1 (as to subdivision (b)(2)); city of Greensboro: 1997-344, s. 1; city of Greensville: 1999-283, s. 1; city of Henderson: 1996, 2nd Ex. Sess., c. 3, s. 1; city of Hickory: 1987, c. 179; 1999-208, s. 1; 1999-

456, s. 49; city of Kannapolis: 2007-344, ss. 1, 3 (as to subdivision (b), and applicable only to annexations in the area of Cabarrus County bound by the existing city of Kannapolis corporate limits to the east, Mecklenburg County/Cabarrus County line to the west, the Cabarrus County/Rowan County/Iredell County lines to the north, and N.C. Highway 73 to the south); city of King's Mountain: 2003-241, s. 1; city of Mooresville, 1995, c. 82, s. 1; city of Mount Airy: 1999-232, s. 1; 2003-281, s. 1; city of Mount Holly: 1985, c. 110; city of New Bern: 1989, c. 382, s. 1; 1993 (Reg. Sess., 1994), c. 605, s. 3; city of Newton: 2002-50, s. 1 (as to subdivision (b)(2)); city of Raleigh: 1998-200, s. 1; city of Reidsville: 1997-343; city of Rockingham: 1995 (Reg. Sess., 1996), c. 654, s. 1; city of Sanford: 2007-43, s. 1 (as to subdivision (b)(1)); city of Statesville: 1989 (Reg. Sess., 1990), c. 882, s. 1; city of Winston-Salem: 2004-37, s. 1 (as to subdivision (b)(2)); town of Andrews: 2003-243, s. 1 (as to certain locations); town of Apex: 1993, c. 312, s. 3; 1995, c. 82, s. 1; town of Banner Elk: 1998-77; town of Beaufort: 1995, c. 82, s. 1, 1997-432, s. 1, 2003-204, s. 1 (as to subsection (b)); town of Brookford: 1999-208, s. 1; 1999-456, s. 49; town of Butner: 2007-269, s. 1.1 (as precleared under Section 5 of the Voting Rights Act); town of Canton: 1983, c. 301; 1985 (Reg. Sess., 1986), c. 979; 1997-2, s. 1; town of Clayton: 1993, c. 63, s. 1; 1999-10, s. 1; 2007-327, s. 2 (as to subdivision (b)(1)); town of Cornelius: 1999-103, s. 1; town of Davidson: 1999-85, s. 1; town of Eastover: 2007-267, s. 1;(as to subdivision (b)(2), contingent on preclearance under section 5 of the Voting Rights Act); town of Edenton: 1995 (Reg. Sess., 1996), c. 707; town of Fuquay-Varina: 1999-304, s. 1; town of Holly Springs: 1991, c. 243 (as to annexation ordinances adopted before July 1, 1993); town of Hope Mills: 1997-151, s. 1; town of Huntersville: 1999-24, s. 1; town of Kenly; 1987, c. 67; town of Kernersville: 2004-37, s. 1 (as to subdivision (b)(2)): town of Knightdale: 1987, c. 234; town of Madison (subdivision (b)(2) does not apply to Madison): 1997-251, s. 2; town of Maggie Valley: 2005-79 (as to subdivision (b)(4)) 160A-58.1; and 2008-28 (as to subdivision (b)(1), and applicable to annexations in certain area in Haywood county); town of Mayodan: 2001-405 (as to subdivisions (b)(4) and (b)(5)); town of Mooresville: 1997-219, ss. 2, 3; town of Morehead City: 1998-42; town of Norwood: 2007-71, s. 1 (as to subdivision (b)(5)); town of Oak Island: 2007-26, s. 2 (as to subdivision (b)(2) and notification requirement to the town of St. James); town of Oak Ridge: 1998-113, as amended by 2005-245, s. 1; town of Pittsboro: 1987 (Reg. Sess., 1988), c. 1023, s. 4.1; town of Pleasant Garden: 1997-344, s. 1; town of Richlands: 2008-30, s. 2 (as to subdivision (b)(5), and applicable to specific parcels); towns of Summerfield and Leland: 1997-249; town of Trent Woods: 1989, c. 382, s. 1; town of Troy: 1993, c. 159, s. 2; town of Wallace: 1995 (Reg. Sess., 1996), c. 692, s. 1; town of Wake Forest: 1989 (Reg. Sess., 1990), c. 882, s. 2(a); 1997-432, s. 1(a), (b); town of Waxhaw: 2003-273, s. 2(b); town of Weaverville: 1989, c. 181, s. 1 (applicable with respect to annexation ordinances adopted on or before June 30, 1990); 1997-151, s. 2; town of Winterville: 2001-77, s. 1 (as to subdivision (b)(2)); village of Marvin: 2002-140, s. 1 (as to subdivision (b)(5)); "town of Oak Island: 2007-26, s. 2(a) (as to subdivisions (b)(2) and (b)(5)).

Effect of Amendments. —

Session Laws 2008-24, s. 1, effective June 30, 2008, inserted "Middlesex" and "Nashville" in the second paragraph of subdivision (b)(5).

Session Laws 2008-30, s. 1, effective June 30, 2008, inserted "Granite Quarry," "Kenansville," "Lillington," "Nashville" and "Troutman" in the second paragraph of subdivision (b)(5).

ARTICLE 7.

Administrative Offices.

Part 4. Personnel.

§ 160A-168. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a city are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the city with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the city.

(b) The following information with respect to each city employee is a matter of public record: name; age; date of original employment or appointment to the service; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the city has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity. The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a city employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A city employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution (of the employee), or for the purpose of assisting in an investigation of (the employee's) tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The city manager, with concurrence of the council, or, in cities not having a manager, the council may inform any person of the employment or nonemployment, promotion, demotion, suspension or other

disciplinary action, reinstatement, transfer, or termination of a city employee and the reasons for that personnel action. Before releasing the information, the manager or council shall determine in writing that the release is essential to maintaining public confidence in the administration of city services or to maintaining the level and quality of city services. This written determination shall be retained in the office of the manager or the city clerk, and is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the city's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(c2) The city council may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the city as long as each personnel file examined is retained.

(c3) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former local governmental employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees.

(d) The city council of a city that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars ($500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 701, s. 2; 1981, c. 926, ss. 1-4; 1993, c. 539, ss. 1084, 1085; 1994, Ex. Sess., c. 24, s. 14(c); 2007-508, s. 7; 2008-194, s. 11(e).)

Effect of Amendments. —
Session Laws 2008-194, s. 11(e), effective August 8, 2008, added subsection (c3).

ARTICLE 8.

Delegation and Exercise of the General Police Power.

§ 160A-174. General ordinance-making power.

CASE NOTES

I. In General.
III. Other Specific Ordinances.

I. IN GENERAL.

Conflict Between Regulation Adopted by State Agency and Municipal Ordinance. —
Judgment affirming a zoning board's decision upholding a zoning administrator's determination that a billboard violated a local zoning ordinance was error because the North Carolina Department of Transportation's outdoor advertising regulations authorized relocation of a billboard within certain limitations, and pursuant to G.S. 160A-174(b)(2) those regulations preempted the local zoning ordinance. Lamar OCI South Corp. v. Stanly County Zoning Bd. of Adjustment, 186 N.C. App. 44, 650 S.E.2d 37, 2007 N.C. App. LEXIS 1985 (2007).

III. OTHER SPECIFIC ORDINANCES.

Prohibition on Sex Offenders Entering Public Parks. — Woodfin, N.C., Ordinances § 130.03, which prohibited registered sex offenders from knowingly entering any public park owned and operated by a town, was rationally related to its intended purpose of protecting the health and safety of the citizens of the town; the town acted within its delegated police power to enact and enforce the ordinance for the purpose of promoting citizen safety, as permitted by G.S. 160A-174. Standley v. Town of Woodfin, 186 N.C. App. 134, 650 S.E.2d 618, 2007 N.C. App. LEXIS 2121 (2007).

Woodfin, N.C., Ordinance § 130.03 was constitutional under the Fourteenth Amendment of the United States Constitution and N.C. Const., Art. I, §§ 19 and 35 as: (1) a sex offender's alleged liberty interest to enter a park owned by a town to have barbecues and enjoy nature was not protected by the right to intrastate travel, (2) an asserted liberty interest to freely roam in parks was not a fundamental right, (3) a town had been delegated the authority to prohibit acts detrimental to its citizens' health, safety, or welfare by G.S. 160A-174, (4) G.S. 14-208.5 recognized that sex offenders posed a high risk of engaging in sex offenses, and (5) Woodfin, N.C., Ordinance § 130.03 was rationally related to a legitimate government interest in protecting children and other visitors to parks owned and operated by the town from sexual attacks. Standley v. Town of Woodfin, 362 N.C. 328, 661 S.E.2d 728, 2008 N.C. LEXIS 496 (2008).

§ 160A-200. Annual notice to chronic violators of overgrown vegetation ordinances.

(a) A municipality may notify a chronic violator of the municipality's overgrown vegetation ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The initial annual notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance.

(b) This section applies to the Towns of Ahoskie, Ayden, Franklinton, Leland, Marshville, Pinetops, Pineville, Smithfield, Spring Lake, Wingate, and Yadkinville, and to the Cities of Durham, Eden, Gastonia, Greensboro, High

Point, Lexington, Louisburg, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Rockingham, Rocky Mount, Wadesboro, and Winston-Salem only. (1999-58, s. 2; 2000-33, s. 1; 2000-38, s. 1; 2001-107, s. 1; 2003-77, s. 1; 2003-80, s. 1; 2005-81, s. 1; 2005-202, s. 1; 2007-31, s. 1; 2007-258, s. 1; 2008-6, s. 1; 2008-25, s. 1.)

Local Modification. — City of Durham: 2007-220, s. 2 (as to subsection (a)); city of Winston Salem: 2003-120, s. 2, as amended by 2007-319, s. 2, and 2008-47, s. 2; town of Spring Lake: 2007-319, s. 2.

Effect of Amendments. —

Session Laws 2008-6, s. 1, effective June 23, 2008, inserted "Franklinton," "Pinetops," "Smithfield," "Yadkinville," "Louisburg," and "Mount Airy" in subsection (b).

Session Laws 2008-25, s. 1, effective June 30, 2008, inserted "Marshville," "Wingate" and "Wadesboro" in subsection (b).

Article 9.

Taxation.

§ 160A-208.1. Disclosure of certain information prohibited.

(a) Disclosure Prohibited. — Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a city who in the course of service to or employment by the city has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) To sort, process, or deliver tax information on behalf of the city, as necessary to administer a tax.

(4) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2008)** To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker.

(b) Punishment. — A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1993, c. 485, s. 34; 1994, Ex. Sess., c. 14, s. 67; 2008-35, s. 1.5.)

Effect of Amendments. — Session Laws 2008-35, s. 1.5, effective for taxes imposed for taxable years beginning on or after July 1, 2008, added subdivision (a)(4).

§ 160A-211. Privilege license taxes.

CASE NOTES

Comity Principles Prevented Federal Court from Granting Declaratory Relief. — In a 42 U.S.C.S. § 1983 action in which direct broadcast satellite providers sought a declaratory judgment that 2006 N.C. Sess. Laws 2006-151, which revoked the authority of local governments to charge franchise taxes to cable providers and vested the state with franchising authority, violated the Dormant Commerce Clause of U.S. Const., Art. I, § 8, cl. 3, comity principles prevented the court from granting the relief sought because (1) the franchise charges levied on cable providers by North Carolina's political subdivisions prior to 2006 N.C. Sess. Laws 2006-151 were taxes; (2) court-ordered redistribution of intrastate taxation authority would have been an inappropriate intrusion by the federal courts into North Carolina's tax laws, and (3) state courts provided a plain, adequate, and complete remedy for the alleged constitutional violations. DIRECTV, Inc. v. Tolson, 513 F.3d 119, 2008 U.S. App. LEXIS 450 (4th Cir. 2008).

§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. — This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. — A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. — Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the operator may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the operator's business records kept in the ordinary course of business and collect tax on the allocated price of the taxable accommodation.

The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business.

The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. — The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. — A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. — A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(f1) Use. — The proceeds of a room occupancy tax shall not be used for development or construction of a hotel or another transient lodging facility.

(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Burgaw, Carolina Beach, Carrboro, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, Mooresville, North Topsail Beach, Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties. (1997-361, s. 4; 1997-364, s. 5; 1997-410, s. 3; 1997-447, s. 2; 1998-112, s. 4; 1999-258, s. 3; 1999-302, s. 2; 2000-103, s. 9; 2001-11, s. 2; 2001-365, s. 3; 2001-434, s. 9; 2001-439, s. 18.1; 2002-94, s. 4; 2002-95, s. 3; 2002-138, s. 2; 2002-139, s. 2; 2002-159, s. 62; 2003-281, s. 14; 2004-105, s. 3; 2004-170, ss. 36(b), 42(b); 2004-199, s. 60(b); 2005-16, s. 3; 2005-46, s. 2.3; 2005-49, s. 3; 2005-220, s. 5; 2005-233, s. 6.2; 2005-435, s. 45; 2006-118, s. 4; 2006-120, ss. 8.2, 10.2; 2006-148, s. 3; 2006-162, s. 20(b); 2006-164, s. 3; 2006-167, s. 3; 2006-264, ss. 19, 81(a); 2007-224, s. 6; 2007-317, s. 3; 2007-340, s. 10; 2007-484, s. 43; 2007-527, s. 42; 2008-64, s. 2; 2008-134, s. 12(c).)

Effect of Amendments. —

Session Laws 2008-64, s. 2, effective July 8, 2008, inserted "Leland" in subsection (g).

Session Laws 2008-134, s. 12(c), effective July 28, 2008, in subsection (c), divided the subsection into the present three paragraphs, added the third and fourth sentences to the first paragraph, and made related changes.

§ 160A-215.2. (For effective date, see note) Heavy equipment gross receipts tax in lieu of property tax.

(a) Definitions. — The following definitions apply in this section:

(1) Heavy equipment. — Defined in G.S. 153A-156.1.

(2) Short-term lease or rental. — Defined in G.S. 105-187.1.

(b) Tax Authorized. — A city may, by resolution, impose a tax at the rate of eight tenths percent (0.8%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The heavy equipment subject to this tax is exempt from property tax under G.S. 105-275, and this tax provides an alternative to a property tax on the equipment. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person under G.S. 105-163.010.

The tax authorized by this section applies to gross receipts that are subject to tax under G.S. 105-164.4(a)(2). Gross receipts from the short-term lease or rental of heavy equipment are subject to a tax imposed by a city under this section if the place of business from which the heavy equipment is delivered is located in the city.

(c) Payment. — A person whose principal business is the short-term lease or rental of heavy equipment is required to remit a tax imposed by this section to the city finance officer. The tax is payable quarterly and is due by the last day of the month following the end of the quarter. The tax is intended to be added to the amount charged for the short-term lease or rental of heavy equipment and paid to the heavy equipment business by the person to whom the heavy equipment is leased or rented.

(d) Enforcement. — The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to a tax imposed under this section. The city finance officer has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(e) Effective Date. — A tax imposed under this section becomes effective on the date set in the resolution imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted.

(f) Repeal. — A city may, by resolution, repeal a tax imposed under this section. The repeal is effective on the date set in the resolution. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted. (2008-144, s. 3.)

Editor's Note. — Section Laws 2008-144, s. 5, made this section effective August 2, 2008, and provided, in part, that a tax imposed under G. S. 153A-156.1 or G.S. 160A-215.2 may not become effective before January 1, 2009.

ARTICLE 10.

Special Assessments.

§ 160A-216. Authority to make special assessments.

Local Modification. — (As to Article 10) city of Asheboro: 1989 (Reg. Sess., 1990), c. 921, s. 13; city of Belmont: 2005-111, s. 1; (As to Article 10) city of Hendersonville: 1991, c. 438; city of High Point: 1989 (Reg. Sess., 1990), c. 919; (as to Article 10) city of Kinston: 1987, c. 169, s. 1; (As to Article 10) city of Monroe: 2000-35, s. 1; (As to Article 10) city of Oxford: 1993, c. 240, s. 2; (As to Article 10) city of Reidsville: 1989 (Reg. Sess., 1990), c. 957, s. 1; city of Roanoke Rapids: 2007-266, s. 2; city of Sanford: 1987, c. 403, s. 1(12): 160A-216; 2008-70, s. 1; city of Southport: 1983, c. 659; city of Statesville: 1991, c. 698; city of Washington: 1983 (Reg. Sess., 1984), c. 951; (As to Article 10) city of Whiteville: 1987 (Reg. Sess., 1988), c. 1018, s. 1; town of Ahoskie: 1987, c. 262, s. 1; town of Apex: 1985, c. 356; town of Benson: 1999-91, s. 1; town of Calabash: 1987, c. 468, s. 5; (As to Article 10) town of Carrboro: 2007-266, s. 1; town of Caswell Beach: 1991 (Reg. Sess., 1992), c. 825, s. 1; town of Clayton: 1987 (Reg. Sess., 1988), c. 983, s. 1; town of Elon College: 1985, c. 109; town of Holden Beach: Session Laws 1981, c. 334; 1987 (Reg. Sess., 1988), c. 951; c. 954; (As to Article 10) town of Long Beach: 1991, c. 464; town of Marietta: 1985, c. 111; town of Ocean Isle Beach: 1989, c. 380, s. 1; (as to Article 10) 2001-478, s. 2.2; town of Sunset Beach: 1987 (Reg. Sess., 1988), c. 954, s. 1; 1989 (Reg. Sess., 1990), c. 875; town of Wake Forest: 1989 (Reg. Sess., 1990), c. 873; town of Wendell: 1985, c. 107; town of Yaupon Beach: 1998-206, s. 1.

§ 160A-238. Authority to make assessments for beach erosion control and flood and hurricane protection works.

Local Modification. — Town of Holden Beach: 1979, c. 440; 1981, c. 318; 1983, c. 490; town of Oak Island: 2008-115, s. 1; town of Ocean Isle Beach: 1979, c. 440; 1981, c. 318; town of Sunset Beach: 1985, c. 725.

Article 10A.

Special Assessments for Critical Infrastructure Needs.

(Effective July 1, 2013)

§ 160A-239.1. (Expires July 1, 2013) Purpose.

This Article enables cities that face increased demands for infrastructure improvements as a result of rapid growth and development to issue revenue bonds payable from special assessments imposed under this Article on benefited property. This Article supplements the authority cities have in Article 10 of this Chapter. The provisions of Article 10 of this Chapter apply to this Article, to the extent they do not conflict with this Article. (2008-165, s. 3.)

Editor's Note. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Session Laws 2008-165, s. 4, is a severability clause.

§ 160A-239.2. (Expires July 1, 2013) Assessments.

(a) Projects. — The council of a city may make special assessments as provided in this Article against benefited property within the city for the purpose of financing the capital costs of projects for which bonds may be issued under any of the following:

(1) G.S. 159-48(b)(17), sanitary sewer systems.
(2) G.S. 159-48(b)(19), storm sewers and flood control facilities.
(3) G.S. 159-48(b)(21), water systems.
(4) G.S. 159-48(b)(23), public transportation facilities.
(5) G.S. 159-48(c)(4), school facilities.
(6) G.S. 159-48(d)(5), streets and sidewalks.

(b) Costs. — The city council must determine a project's total estimated cost. In addition to the costs allowed under G.S. 153A-193, the costs may include any expenses allowed under G.S. 159-84. A preliminary assessment roll may be prepared before the costs are incurred based on the estimated cost of the project.

(c) Method. — The city council must establish an assessment method that will most accurately assess each lot or parcel of land according to the benefits conferred upon it by the project for which the assessment is made. In addition to the bases upon which assessments may be made under G.S. 160A-218, the council may select any other method designed to allocate the costs in accordance with benefits conferred. (2008-165, s. 3; 2008-187, s. 47.5(b).)

Editor's Note. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Session Laws 2008-187, s. 47.5(b), amended G.S. 160A-239.2, as enacted by House Bill 1770 of the 2007 Regular Session of the General Assembly, contingent on that act becoming law. House Bill 1770 was enacted as Session Laws 2008-165.

Effect of Amendments. — Session Laws 2008-187, s. 47.5(b), effective August 7, 2008, inserted "as provided in this Article" in the introductory paragraph of subsection (a); rewrote the second sentence of subsection (b), which formerly read: "An assessment may be imposed before the costs are incurred, based on the estimated cost"; and substituted "G.S. 160A-218" for "G.S. 153A-186" in subsection (c).

§ 160A-239.3. (Expires July 1, 2013) Petition required.

(a) Petition. — The city council may not impose a special assessment under this Article unless it receives a petition for the project to be financed by the assessment signed by at least a majority of the owners of real property to be assessed who must represent at least sixty-six percent (66%) of the assessed value of all real property to be assessed. The petition must include the following:

(1) A statement of the project proposed to be financed in whole or in part by the imposition of an assessment under this Article.
(2) An estimate of the cost of the project.
(3) An estimate of the portion of the cost of the project to be assessed.

(b) Petition Withdrawn. — The city council must wait at least 10 days after the public hearing on the preliminary assessment resolution before adopting a final assessment resolution. A petition submitted under subsection (a) of this section may be withdrawn if notice of petition withdrawal is given in writing to the council signed by at least a majority of the owners who signed the petition submitted under subsection (a) of this section representing at least fifty percent (50%) of the assessed value of all real property to be assessed. The council may not adopt a final assessment resolution if it receives a timely notice of petition withdrawal.

(c) Validity of Assessment. — No right of action or defense asserting the invalidity of an assessment on grounds that the city did not comply with this section may be asserted except in an action or proceeding begun within 90 days after publication of the notice of adoption of the preliminary assessment resolution. (2008-165, s. 3.)

Editor's Note. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

§ 160A-239.4. (Expires July 1, 2013) Financing a project for which an assessment is imposed.

A city council may provide for the payment of the cost of a project for which an assessment may be imposed under this Article solely from revenue bonds to be repaid from the assessments or from a combination of financing sources that include the revenue bonds. Other financing sources include general obligation bonds and general revenues. The assessment resolution must include the estimated cost of the project and the amount of the cost to be derived from revenue bonds and any other financing source. (2008-165, s. 3.)

Editor's Note. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

§ 160A-239.5. (Expires July 1, 2013) Payment of assessments by installments.

An assessment imposed under this Article is payable in annual installments. The city council must set the number of annual installments, which may not be more than 30. The installments are due on the date that property taxes are due. (2008-165, s. 3.)

Editor's Note. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

§ 160A-239.6. (Expires July 1, 2013) Revenue bonds.

(a) Authorization. — A city council that imposes an assessment under this Article may issue revenue bonds under Article 5 of Chapter 159 of the General Statutes to finance the project for which the assessment is imposed and use the proceeds of the assessment imposed as revenues pertaining to the project.

(b) Modifications. — This Article specifically modifies the authority of a city to issue revenue bonds under Article 5 of Chapter 159 of the General Statutes by extending the authority in that Article to include a project for which an assessment may be imposed under this Article. In applying the provisions of Article 5, the following definitions apply:

(1) Revenue bond project. — Defined in G.S. 159-81(3). The term includes projects for which an assessment is imposed under this Article.

(2) Revenues. — Defined in G.S. 159-81(4). The term includes assessments imposed under this Article to finance a project allowed under this Article. (2008-165, s. 3.)

Editor's Note. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Article 12.

Sale and Disposition of Property.

§ 160A-272. Lease or rental of property.

Local Modification. — Cabarrus: 2000-88, s. 2; Columbus: 1995 (Reg. Sess., 1996), c. 709, s. 1; Duplin: 1987, c. 50; 1987 (Reg. Sess., 1988), c. 1006, s. 6; Durham: 2005-172, s. 1; Lincoln: 1983 (Reg. Sess., 1984), c. 944; 1989, c. 411, s. 1; Montgomery: 2001-485, s. 3.1; Pasquotank: 1991, c. 382; Sampson: 1985 (Reg. Sess., 1986), c. 943, s. 2; Tyrrell: 1987, c. 781, s. 1.1; Wake: 1979, c. 275; Wilson: 1983, c. 239; city of Asheboro: 1989 (Reg. Sess., 1990), c. 867; city of Charlotte: 2000-26, s. 1, as amended by 2007-255, s. 1; city of Concord: 1985, c. 355, as amended by 2000-88, s. 2; city of Gastonia: 1991, c. 557, s. 1; city of Mount Airy: 2003-281, s. 1; city of Salisbury: 1987, c. 205, s. 1; city of Statesville: 1983 (Reg. Sess., 1984), c. 940; 1987 (Reg. Sess., 1988), c. 883; town of Beaufort: 1979, c. 371; town of Columbia: 1987, c. 781, s. 1.1; town of Hope Mills: 1985, c. 285; town of Kenansville: 1987, c. 50; town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Matthews: 2001-102; town of Newport: 1998-30; village of Wesley Chapel: (as to lease of property to YMCA) 2008-60, s. 1; Carteret County Board of Education: 2002-35, s. 1 (as to lease of property to Boys and Girls Club); Duplin County Board of Education: 1987, c. 50; Elizabeth City—Pasquotank County Airport Authority: 1991, c. 26; Goldsboro-Wayne Airport Authority: 1987 (Reg. Sess., 1988), c. 1006, s. 5; Warren Field Airport Commission: 2002-84, s. 1.

ARTICLE 14A.

Municipal Firefighters.

§ 160A-295. (Contingent effective date — see Editor's note) Definitions.

As used in this Article, the following terms mean:

(1) Compensatory time. — Time off with regular compensation in lieu of immediate overtime premium pay when a fire department, under certain conditions, compensates the firefighter for overtime hours worked.

(2) Firefighter. — A full-time, paid employee of an employer, maintaining a fire department certified by the North Carolina Department of Insurance, who is actively serving in a position with assigned primary duties and responsibilities for the prevention, detection, and suppression of fire.

(3) Supervisory personnel. — An individual employed by a public safety employer who (i) has the authority in the interest of the employer to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove public safety officers, or to adjust their grievances or effectively recommend an adjustment, provided that the exercise of the authority is not merely routine or clerical in nature, but requires consistent exercise of independent judgment; and (ii) devotes a majority of time at work exercising that authority.

(4) Trade time. — The time one individual substitutes for another during scheduled work hours in performance of work in the same capacity when two individuals are employed in any occupation by the same fire department, as agreed to solely at the individual's option and with the approval of the management of the fire department. The hours worked are excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under this Article. Where one employee substitutes for another, the employee being substituted for is credited as if he or she had worked his or her normal work schedule for that shift. (2008-151, s. 1.)

Editor's Note. — Session Laws 2008-151, s. 2, makes this Article effective when 29 U.S.C. § 207(k) is repealed or is no longer enforceable.

§ 160A-295.1. (Contingent effective date — see Editor's note) Municipal firefighters; hours of labor; overtime pay.

(a) A firefighter or a member of a fire department who provides emergency medical services, other than supervisory personnel, and who is required or permitted to work, on average, more than 53 hours in a seven-day work period or up to the number of hours that bears the same ratio to 212 hours as the number of days in the work period bears to 28 days is considered to have worked overtime. A person included under this subsection is entitled to be compensated for the overtime as provided by subsection (d) of this section.

(b) A member of a fire department, other than supervisory personnel, who does not fight fires or provide emergency medical services, including a mechanic, clerk, investigator, inspector, fire marshal, fire alarm dispatcher, or maintenance worker, and who is required or permitted to average more hours in a week than the number of hours in a normal workweek of the majority of the employees of the municipality other than firefighters, emergency medical service personnel, and police officers, is considered to have worked overtime. A person included under this subsection is entitled to be compensated for the overtime as provided by subsection (d) of this section.

(c) In computing the hours worked in a workweek or the average number of hours worked in a workweek during a work cycle of a firefighter or other member of a fire department covered by this section, all hours are counted during which the firefighter or other member of a fire department is required to remain on call on the employer's premises or so close to the employer's premises that the person cannot use those hours effectively for that person's own purposes. Hours in which the firefighter or other member of a fire department is required only to leave a telephone number at which that person may be reached or to remain accessible by radio or pager are not to be used in computing the hours worked. In computing the hours in a workweek or the average number of hours in a workweek during a work cycle of a firefighter or a member of a fire department who provides emergency medical services, vacation, sick time, holidays, time in lieu of holidays, compensatory time, or trade time may be excluded as hours worked.

(d) A firefighter or other member of a fire department may be required or permitted to work overtime. A firefighter, other than supervisory personnel, who is required or permitted to work overtime as provided by subsection (a) of this section is entitled to be paid overtime for the excess hours worked without regard to the number of hours worked in any one week of the work cycle. Overtime hours as computed under this Article are to be paid at a rate equal to one and one-half times the compensation paid to the firefighter or member of the fire department for regular hours. To the extent that the municipality complies with the requirements of section 7(o) of the Fair Labor Standards Act (29 U.S.C. § 207(o)), it may compensate firefighters for their overtime hours with compensatory time in lieu of pay. A member of a fire department included under subsection (b) of this section shall be paid overtime in the same manner as other employees of the municipality entitled to overtime pay, excluding firefighters. (2008-151, s. 1.)

Editor's Note. — Session Laws 2008-151, s. 2, makes this Article effective when 29 U.S.C. § 207(k) is repealed or is no longer enforceable.

§ 160A-295.2. (Contingent effective date — see Editor's note) Authority of Department of Labor.

The Department of Labor shall have the authority to enforce the provisions of this Article to the extent that these provisions are not subject to enforcement under the Fair Labor Standards Act (29 U.S.C. § 207). (2008-151, s. 1.)

Editor's Note. — Session Laws 2008-151, s. 2, makes this Article effective when 29 U.S.C. § 207(k) is repealed or is no longer enforceable.

§ 160A-295.3. (Contingent effective date — see Editor's note) Applicability.

This Article applies only to full-time paid firefighters and other full-time paid members of a fire department of a municipality that employs five or more employees in fire protection during the workweek. (2008-151, s. 1.)

Editor's Note. — Session Laws 2008-151, s. 2, makes this Article effective when 29 U.S.C. § 207(k) is repealed or is no longer enforceable.

Article 15.

Streets, Traffic and Parking.

§ 160A-300.5. Regulation of golf carts on streets in certain localities.

(a) Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a city may, by ordinance, regulate the operation of golf carts on any public street or highway within the city limits, or on any property owned or leased by the city.

(b) By ordinance, a city may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

(c) This section applies to the County of New Hanover, to the Cities of Locust, Saluda, and Wilmington, to the Towns of Badin, Beulaville, Butner, Carolina Beach, Emerald Isle, Erwin, Faison, Fremont, Hobgood, Indian Beach, Kings Mountain, Kure Beach, Mayodan, Morrisville, Mount Olive, Oakboro, Oriental, Pineville, Shelby, and Wrightsville Beach, and to the Village of Pinehurst only.

(d) For purposes of this section, the term "city" shall include a city, a town, a village, or a county. For purposes of this section, the term "county" shall mean any unincorporated areas within that county boundary. (2006-27, ss. 1, 2; 2007-72, s. 1; 2007-336, s. 1; 2008-71, s. 1.)

Local Modification. — Town of Mayodan: 2008-71, s. 2.

Effect of Amendments. —
Session Laws 2008-71, s. 1, effective July 10, 2008, in subsection (a), substituted "city may" for "town may"; rewrote subsection (c); and added subsection (d).

Article 16.

Public Enterprises.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined.

Rural Center/Funds for Local Government Water, Sewer, and Natural Gas Improvement Grants. — Session Laws 2008-107, s. 13.8(a)-(p), provides: "(a) Appropriation. — Of the funds appropriated to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of fifty million dollars ($50,000,000) for the 2008-2009 fiscal year shall be used to provide grants to local government units for wastewater-related projects and public water system-related projects as provided by this section. Up to four million dollars ($4,000,000) of these funds may be used for natural gas line projects as provided by this section. Funds may also be used to provide drought-related emergency water and sewer grants.

"(b) Definitions. — The definitions in G.S. 159G-20 apply in this section, except that all census calculations are based on the most recent federal decennial census. In addition, the following definitions shall apply in this section unless otherwise provided:

"(1) Ability to pay. — An assessment of the ability of a local government unit to pay for a water infrastructure project or natural gas line project as calculated annually by the Division of Community Assistance in the Department of Commerce.

"(2) Economically distressed area. — Any of the following:

"a. An economically distressed county as defined in G.S. 143B-437.01.

"b. That part of a county in which the poverty rate is at least one hundred fifty percent (150%) of the State poverty rate. The poverty rate is the percentage of the population whose income is below the most recent federal poverty level set by the U.S. Bureau of the Census.

"c. If it is not a county, its ability to pay is less than fifty percent (50%) of the ability to pay of the county in which it is located.

"(3) Rural county. — A county with a population density of fewer than 250 people per square mile based on the most recent federal decennial census.

"(c) Eligible Applicants; Eligible Projects. — A local government unit is eligible for a grant under this section if it meets the eligibility requirements under subsections (d) or (e) of this section for the specific type of grant. The funds appropriated under this section may be used to provide either a planning grant that meets the requirements under subsection (d) of this section or a supplemental grant that meets the requirements of subsection (e) of this section. The following projects are eligible for receiving a grant under this section:

"(1) Wastewater collection system.

"(2) Wastewater treatment works.

"(3) Public water system.

"(4) Wastewater and drinking water infrastructure planning.

"(5) Multi-jurisdictional wastewater, drinking water, water quality, and stormwater planning.

"(6) Natural gas line project.

"(d) Planning Grants. — A planning grant under this section is available for the costs associated with preliminary planning for wastewater collection system projects, wastewater treatment works projects, public water system projects, and natural gas line projects. Preliminary planning includes developing a capital improvement plan, developing a comprehensive land-use plan that provides for water quality protection, conducting a feasibility study, developing a regional or multi-jurisdictional infrastructure or water quality improvement plan, assembling a financing plan to carry out a project, completing a grant application, and preparing a preliminary engineering report for a proposed project. A planning grant is subject to the following restrictions:

"(1) Eligibility. — A local government unit is eligible for a planning grant if it meets the following criteria:

"a. It is a rural county or is located in one of these counties.

"b. It is an economically distressed county or is located in an economically distressed county or an economically distressed area.

"c. For purposes of this subsection, a regional council of governments organized under G.S. 160A-460 or a regional planning and development commission organized under G.S. 153A-391 is considered a local government unit. A regional council of governments or regional planning and development commission is eligible for a grant if it serves a rural county and is applying for a regional or multi-jurisdictional planning project involving two or more units of local government.

"(2) Maximum. — A planning grant shall not exceed forty thousand dollars ($40,000) for each unit of local government.

"(3) Matching funds. — A local government unit shall match a planning grant on a dollar-for-dollar basis unless the unit meets one or more of the following descriptions, in which instance the Rural Center may require a match of fifty percent (50%) or less:

"a. It is an economically distressed county or located in an economically distressed county.

"b. Its poverty rate is at least one hundred fifty percent (150%) of the State poverty rate.

"c. If it is not a county, its ability to pay is less than fifty percent (50%) of the ability to pay of the county in which it is located.

"(e) Supplemental Grants. — A supplemental grant is available to match other funds to be applied to the construction costs of an eligible project. Other funds include federal funds, State funds, and local funds. A supplemental grant is subject to the following restrictions:

"(1) Eligibility. — A local government unit is eligible for a supplemental grant if it meets the following criteria:

"a. It is a rural county or is located in one of these counties.

"b. It adopts a resolution to set the household user fee for water and sewer service or natural gas service in the area served by the project at an amount that equals or exceeds the high-unit-cost threshold.

"(2) Maximum. — A supplemental grant

shall not exceed five hundred thousand dollars ($500,000) unless the applicant meets one or more of these descriptions:

"a. It is an economically distressed county or is located in an economically distressed county.

"b. Its poverty rate is at least one hundred fifty percent (150%) of the State poverty rate.

"c. If it is not a county, its ability to pay is less than fifty percent (50%) of the ability to pay of the county in which it is located.

"The maximum supplemental grant for an applicant meeting at least one of these descriptions is the lesser of one million dollars ($1,000,000) or twenty-five percent (25%) of the total project cost.

"(3) Matching funds. — A local government unit shall match a supplemental grant on a dollar-for-dollar basis unless the unit meets one or more of the following descriptions, in which instance the Rural Center may require a match of fifty percent (50%) or less:

"a. It is an economically distressed county or is located in an economically distressed county.

"b. Its poverty rate is at least one hundred fifty percent (150%) of the State poverty rate.

"c. If it is not a county, its ability to pay is less than fifty percent (50%) of the ability to pay of the county in which it is located.

"A local government unit that meets one or more of these descriptions may not provide less than a dollar-for-dollar match if the supplemental grant amount requested exceeds five hundred thousand dollars ($500,000).

"(f) Criteria for Grants. — All projects must document a current critical water or wastewater need affecting human health or the environment or must document a current critical natural gas line project. The criteria in G.S. 159G-23, the criteria set out in this section, and any other criteria established by the Board of Directors of the Rural Center shall apply to a grant provided under this section. An application for a project that serves an economically distressed area shall have priority over a project that does not. The Board of Directors of the Rural Center may determine that a crisis need exists that merits special consideration and may establish a subcategory of this program to address one or more crisis applications.

"(g) Grant Applications. — Any application for a grant under this section shall be submitted by the local government unit to the Rural Center. An application shall be submitted on a form prescribed by the Rural Center and shall contain the information required by the Rural Center. An applicant shall submit to the Rural Center any additional information requested by the Rural Center to enable the Rural Center to make a determination on the application. An application that does not contain information required on the application or requested by the Rural Center is incomplete and is not eligible for consideration. An applicant may submit an application in as many categories as it is eligible for consideration under this section.

"(h) Environmental Assessment. — An application submitted under this section for a supplemental grant shall state whether the project to be funded by the grant requires an environmental assessment. If the application indicates that an environmental assessment is not required, it must identify the exclusion in the North Carolina Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, that applies to the project. The Rural Center shall give the Department of Environment and Natural Resources a copy of an application that indicates an environmental assessment is not required. If the Department of Environment and Natural Resources determines that the project requires an environmental assessment, the Department shall notify the Rural Center and the applicant, and the applicant shall submit the assessment to the Department before the Center continues its review of the application. An application that does not identify an exclusion in the North Carolina Environmental Policy Act shall include the environmental assessment of the project's probable impacts on the environment that was submitted to the Department of Environment and Natural Resources. If the Department notifies the Rural Center that an environmental impact statement is required, the Rural Center shall not award the applicant a grant until a final environmental assessment impact statement has been completed and approved as provided in the Environmental Policy Act.

"(i) Review of Applications and Award of Grant. — The Rural Center shall review grant applications and award grants as provided by this subsection:

"(1) Point assignment. — The Rural Center shall review all grant applications submitted under this section for an application period, to be determined by the Rural Center, and shall rank each application in accordance with the points assigned to the evaluation criteria. Applications addressing a crisis need may be ranked according to a special set of criteria or be reviewed for a specifically determined application period. The Rural Center shall make a written determination of an application's rank and attach the determination to the application. The Rural Center's determination of rank is conclusive.

"(2) Reconsideration. — When an application's rank is too low to receive an award of a grant for the application period, the Rural Center may reconsider an amended application, provided the application addresses questions from the previous grant round.

"(3) Notification of decision. — When the Rural Center determines that an application's rank makes it eligible for an award of a grant, the Rural Center shall send the applicant a letter of intent to award the grant. The notice shall set out any conditions the applicant must meet to receive an award of a grant. When the applicant satisfies the conditions set out in the letter of intent, the Rural Center shall send the applicant an offer to award a grant. The applicant shall give the Rural Center written notice of whether it accepts or rejects the offer. A grant is considered awarded the date the offer to award the grant is sent by the Rural Center.

"(j) Disbursement of Grant. — A planning grant awarded under this section shall be disbursed in two payments. Other grants awarded under this section shall be disbursed in two or more payments based on the progress of the project for which the grant was awarded. To obtain a payment, a grant recipient shall submit a request for payment to the Rural Center and shall document the expenditures for which the payment is requested. The Rural Center shall review the payment request for compliance with all grant conditions.

"(k) Withdrawal of Grant. — An award for a supplemental grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within one year after the date of the award for supplemental grants under subsection (e) of this section, unless the Board of Directors of the Rural Center finds that the applicant has good cause for the failure. If the Rural Center finds good cause for an applicant's failure, the Rural Center shall set a date by which the applicant must take action or forfeit the grant. Planning grants may be withdrawn if there is insufficient progress in meeting the scope of work within one year of the award date.

"(*l*) Inspection of Project. — The Rural Center may inspect a project as provided by this subsection:

"(1) Authority. — The Rural Center may inspect a project for which it awards a grant under this section to determine the progress made on the project and whether the construction of the project is consistent with the project described in the grant application. The inspection may be performed by personnel of the Rural Center or by a professional engineer licensed under Chapter 89C of the General Statutes.

"(2) Disqualification. — An individual may not perform an inspection of a project under this section if the individual meets any of the following criteria:

"a. Is an officer or employee of the local government unit that received the grant award for the project.

"b. Is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of the project for which the grant was made.

"(m) Administration Costs. — The Rural Center may use a portion of the funds appropriated in this section for administration, not to exceed two percent (2%), for the life of the grant program created by this section.

"(n) Reporting Requirement. — The Rural Center shall report to the Joint Legislative Commission on Governmental Operations on a quarterly basis concerning the progress of the grant program created under this section. The first report is due no later than December 1, 2008.

"(o) Separate Accounts. — Each grant that is provided under this section shall be administered through a separate account.

"(p) Loans Prohibited. — The Rural Center shall not use the funds appropriated in this section to make loans."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 160A-314. Authority to fix and enforce rates.

Local Modification. — City of Charlotte: 1998-66; city of Dunn: 1991, c. 502; city of Durham: 1991 (Reg. Sess., 1992), c. 925; city of Gastonia: 1991, c. 557, s. 1; city of Reidsville: 1983, c. 125; 1989 (Reg. Sess., 1990), c. 957, s. 1; town of Angier: 2008-63, s. 3; town of Erwin: 1991, c. 502; town of Kernersville: 2005-441, s. 3(b) (as to subsection (c), applicable to stream-clearing activities commenced on or after September 27, 2005); town of Lake Lure: 1987, c. 194, s. 1; town of Lillington: 1991, c. 502; village of Clemmons: 2005-441, s. 3(b) (as to subsection (c), applicable to stream-clearing activities commenced on or after September 27, 2005).

Article 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. Territorial jurisdiction.

CASE NOTES

Standing to Contest City's Attempt to Exercise Extraterritorial Jurisdiction. — Trial court properly dismissed the claims brought by a county and the county commissioners in their official capacities challenging a city's attempt to exercise extraterritorial jurisdiction because the county had stated no legal or factual basis for its claim that its tax base and planning jurisdiction would be affected by the city exercising extraterritorial jurisdiction, and the commissioners acknowledged that they were not the real parties in interest; thus, neither the county nor the commissioners were the real parties in interest. Macon County v. Town of Highlands, — N.C. App. —, 654 S.E.2d 17, 2007 N.C. App. LEXIS 2530 (2007).

§ 160A-362. Extraterritorial representation.

CASE NOTES

Proportional Representation. — Trial court properly granted a city summary judgment on the claims brought by one commissioner in his individual capacity challenging the city's attempt to exercise extraterritorial jurisdiction because the commissioner failed to demonstrate that the city's method of proportional representation under G.S. 160A-362 was unreasonable, nor had the commissioner demonstrated that a city could not provide its own means of proportional representation. Macon County v. Town of Highlands, — N.C. App. —, 654 S.E.2d 17, 2007 N.C. App. LEXIS 2530 (2007).

§ 160A-364. Procedure for adopting, amending, or repealing ordinances under Article.

CASE NOTES

Cited in Rakestraw v. Town of Knightdale, — N.C. App. —, 654 S.E.2d 825, 2008 N.C. App. LEXIS 69 (2008).

Part 2. Subdivision Regulation.

§ 160A-371. Subdivision regulation.

CASE NOTES

Denial of Subdivision Application. — Denial of a property owner's subdivision application was properly reversed because the property owner complied with the general and technical requirements of the town's subdivision ordinance since substantial evidence did not support findings regarding overcrowding of schools, increased traffic, and incompatibility with the existing neighborhood; also, remand for clarification of subjective criteria in the ordinance was reasonable. Blue Ridge Co., L.L.C. v. Town of Pineville, — N.C. App. —, 655 S.E.2d 843, 2008 N.C. App. LEXIS 227 (2008).

Part 3. Zoning.

§ 160A-381. Grant of power.

Local Modification. — Town of Chapel Hill: (as to subsection (c)) 1975, c. 473, s. 5.42, as added by 1993, c. 549, s. 3, as amended by 2008-76, s. 1; (as to subsection (d), and applicable in that area where the town exercises territorial planning jurisdiction, including any area under the town's jurisdiction pursuant to a Joint Planning Agreement with Orange County) 2003-237, s. 2; 2004-27, s. 1.

CASE NOTES

IV. Specific Zoning Ordinances.

IV. SPECIFIC ZONING ORDINANCES.

Denial of a property owner's subdivision application was properly reversed because the property owner complied with the general and technical requirements of the town's subdivision ordinance since substantial evidence did not support findings regarding overcrowding of schools, increased traffic, and incompatibility with the existing neighborhood; also, remand for clarification of subjective criteria in the ordinance was reasonable. Blue Ridge Co., L.L.C. v. Town of Pineville, — N.C. App. —, 655 S.E.2d 843, 2008 N.C. App. LEXIS 227 (2008).

Owner Occupancy Ordinance. — Wilmington, N.C., Land Development Code § 18-285(g), to the extent it required owner-occupancy of a property, was unconstitutional. It regulated the lawful ownership of property, rather than the use of it, and G.S. 160A-381(a), while allowing cities the power to regulate property, only allowed regulation to the extent of promoting health, safety, and general welfare principles as set forth in G.S. 160A-383. City of Wilmington v. Hill, — N.C. App. —, 657 S.E.2d 670, 2008 N.C. App. LEXIS 385 (2008).

§ 160A-382. Districts.

CASE NOTES

Exceptions Or Decreased Standards. — There was no merit to an argument that G.S. 160A-382 did not permit exceptions or decreased standards. Rakestraw v. Town of Knightdale, — N.C. App. —, 654 S.E.2d 825, 2008 N.C. App. LEXIS 69 (2008).

§ 160A-383. Purposes in view.

CASE NOTES

Abstention. — Even if the instant court was to assume that plaintiffs had a property interest in building an auto park on the property, issues of fact precluded the granting of summary judgment on plaintiffs' substantive due process claim; the district court did not abuse the court's discretion concluding that Burford abstention was appropriate because the case involved difficult issues of state land use policy. MLC Auto., LLC v. Town of S. Pines, 532 F.3d 269, 2008 U.S. App. LEXIS 14189 (4th Cir. 2008).

Owner Occupancy Ordinance. — Wilmington, N.C., Land Development Code § 18-285(g), to the extent it required owner-occupancy of a property, was unconstitutional. It regulated the lawful ownership of property, rather than the use of it, and G.S. 160A-381(a), while allowing cities the power to regulate property, only allowed regulation to the extent of promoting health, safety, and general welfare principles as set forth in G.S. 160A-383. City of Wilmington v. Hill, — N.C. App. —, 657 S.E.2d 670, 2008 N.C. App. LEXIS 385 (2008).

§ 160A-383.4. Local energy efficiency incentives.

(a) Land-Use Development Incentives. — Counties and municipalities, for the purpose of reducing the amount of energy consumption by new development, and thereby promoting the public health, safety, and welfare, may adopt ordinances to grant a density bonus, make adjustments to otherwise applicable development requirements, or provide other incentives to a developer or builder within the county or municipality and its extraterritorial planning jurisdiction if the developer or builder agrees to construct new development or reconstruct existing development in a manner that the county or municipality determines, based on generally recognized standards established for such purposes, makes a significant contribution to the reduction of energy consumption.

(b) [Applicability. —] This section applies to only to Cabarrus County, the Cities of Asheville, Charlotte, Concord, Durham, Kannapolis, Locust, and Wilmington, and to the Towns of Carrboro, Cary, Chapel Hill, Harrisburg, Midland, Mount Pleasant, and Stanfield. (2007-241, ss. 1, 2; 2008-22, s. 1.)

Editor's Note. — Session Laws 2007-241, as amended by Session Laws 2008-22, ss. 1 and 2, effective June 30, 2008, now applies to 10 or more localities, and has been codified as this section at the direction of the Revisor of Statutes.

§ 160A-384. Method of procedure.

CASE NOTES

Notice Held Sufficient. —

In a rezoning case, a sign stating, "Public Hearing Property Notice," and giving a telephone number for further information was sufficient under G.S. 160A-384(c); other notice methods are designed to give the public more specific information, while the posted sign is designed as part of the overall notice scheme to identify and locate the property that is the subject of the public hearing process. Rakestraw v. Town of Knightdale, — N.C. App. —, 654 S.E.2d 825, 2008 N.C. App. LEXIS 69 (2008).

In the absence of fraud, under G.S. 160A-384(a), an affidavit by a town's zoning technician that she had mailed written notices was deemed conclusive that the town had complied with mail notification requirements. Rakestraw v. Town of Knightdale, — N.C. App. —, 654 S.E.2d 825, 2008 N.C. App. LEXIS 69 (2008).

§ 160A-388. Board of adjustment.

CASE NOTES

I. In General.
II. Judicial Review.

I. IN GENERAL.

Standing to Challenge Zoning Ordinance. —

Neighboring property owners lacked standing to petition for a writ of certiorari challenging local zoning board's grant of a special use permit for an adult club because ownership of adjacent property was insufficient to establish standing under G.S. 160A-388(e2) absent an assertion of special damages distinct from the rest of the community. Moreover, the evidence regarding inadequate parking and concerns about increased criminal activity was too general and speculative to support a finding that an injury resulted or would result from the zoning action; thus, the neighboring owners were not aggrieved parties under G.S. 160A-388(e2). Mangum v. Raleigh Bd. of Adjustment, — N.C. App. —, 652 S.E.2d 731, 2007 N.C. App. LEXIS 2368 (2007).

II. JUDICIAL REVIEW.

Petitioner Held Not "Aggrieved Party." —

Where a county zoning officer granted a building permit to a church, an adjacent property owner lacked standing to appeal from the zoning officer to the zoning board under G.S. 153A-345(b) or 1947 N.C. Sess. Laws, ch. 677, § 33, because the property owner did not allege or show the requisite special damages to assert standing as a person aggrieved since the application did not allege that the zoning decisions had decreased the value of the property owner's property or would do so in the future. Smith v. Forsyth County Bd. of Adjustment, — N.C. App. —, 652 S.E.2d 355, 2007 N.C. App. LEXIS 2272 (2007).

Review of Denial of Subdivision Application. — Denial of a property owner's subdivision application was properly reversed because the property owner complied with the general and technical requirements of the town's subdivision ordinance since substantial evidence did not support findings regarding overcrowding of schools, increased traffic, and incompatibility with the existing neighborhood; also, remand for clarification of subjective criteria in the ordinance was reasonable. Blue Ridge Co., L.L.C. v. Town of Pineville, — N.C. App. —, 655 S.E.2d 843, 2008 N.C. App. LEXIS 227 (2008).

Part 5. Building Inspection.

§ 160A-417. Permits.

(a) No person shall commence or proceed with:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure,

(2) The installation, extension, or general repair of any plumbing system,

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system, or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment,

without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential building plans submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems necessary. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute a Class 1 misdemeanor.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by

G.S. 113A-57, unless an erosion and sedimentation control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity.

(c) **(Effective April 1, 2009)** No permit shall be issued pursuant to subsection (a) of this section for any land-disturbing activity that is subject to, but does not comply with, the requirements of G.S. 113A-71. (1905, c. 506, s. 26; Rev., s. 2986; 1915, c. 192, s. 3; C.S., s. 2748; 1957, c. 817; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 65; 1981, c. 677, s. 1; 1983, c. 377, s. 3; c. 614, s. 1; 1987 (Reg. Sess., 1988), c. 1000, s. 2; 1993, c. 539, s. 1090; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 741, s. 2; 2002-165, s. 2.20; 2008-198, s. 8(d).)

Local Modification. — Alamance: 1993, c. 381, s. 2; Cumberland: 1995 (Reg. Sess., 1996), c. 732, s. 1; Scotland: 1995, c. 124, s. 1; town of Sunset Beach: 1997-63; 1997-407, s. 1; town of Wrightsville Beach: 1989, c. 611, s. 1, as amended by 2005-265, s. 1.

Editor's Note. — Session Laws 2008-198, s. 12 provided, in part, that subsection 8(d) of the act applies to building permits issued pursuant to G.S. 153A-357 and G.S. 160A-417 for which applications are received on or after April 1, 2009.

The reference in subsection (c) to G.S. 113A-71 was substituted for G.S. 113A-72 following its renumbering at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-198, s. 8(d), effective April 1, 2009, added subsection (c). For applicability, see Editor's note.

§ 160A-425.1. Unsafe buildings condemned in certain localities.

(a) Residential Building and Nonresidential Building or Structure. — Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

(b) Residential Building and Nonresidential Building or Structure. — In addition to the authority granted in subsection (a) of this section, an inspector may declare a residential building or nonresidential building or structure within a community development target area to be unsafe if it meets both of the following conditions:

(1) It appears to the inspector to be vacant or abandoned.

(2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance.

(c) If an inspector declares a residential building or nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of an urban progress zone under G.S. 143B-437.09, a "nonresidential redevelopment area" under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens.

(d) This section applies to the Cities of Clinton, Durham, Fayetteville, Goldsboro, High Point, Lumberton, Rocky Mount, Whiteville, and Wilson, and the Towns of Garner, Franklin, Hope Mills, Louisburg, and Spring Lake only.

(1905, c. 506, s. 15; Rev., s. 3010; 1915, c. 192, s. 15; C.S., s. 2773; 1929, c. 199, s. 1; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 1; 2001-386, s. 1; 2002-118, s. 1; 2003-23, s. 1; 2003-42, s. 1; 2004-6, s. 1; 2006-116, s. 3; 2006-252, s. 2.18; 2007-216, s. 1; 2008-59, s. 1.)

Effect of Amendments. —

Session Laws 2008-59, s. 1, effective July 7, 2008, in subsection (d), inserted "Rocky Mount" and substituted "Whiteville, and Wilson" for "and Whiteville."

§ 160A-432. Enforcement.

(a) [Action Authorized.] — Whenever any violation is denominated a misdemeanor under the provisions of this Part, the city, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

(a1) [Removal of Building: Certain Localities.] — In the case of a residential building or nonresidential building or structure declared unsafe under G.S. 160A-425.1, a city may, in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The amounts incurred by the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of this Chapter. If the building or structure is removed or demolished by the city, the city shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

This subsection applies to the Cities of Clinton, Durham, Fayetteville, Goldsboro, High Point, Lumberton, Rocky Mount, and Wilson, and the Towns of Garner, Franklin, Hope Mills, Louisburg, and Spring Lake.

(b) [Removal of Building: Other Localities.] — In the case of a nonresidential building or structure declared unsafe under G.S. 160A-426, a city may, in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The amounts incurred by the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of this Chapter. If the building or structure is removed or demolished by the city, the city shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

(b1) Additional Lien. — The amounts incurred by the city in connection with the removal or demolition shall also be a lien against any other real property owned by the owner of the building or structure and located within the city limits or within one mile of the city limits, except for the owner's primary residence. The provisions of subsection (b) of this section apply to this additional lien, except that this additional lien is inferior to all prior liens and shall be collected as a money judgment.

(c) [Nonexclusive Remedy.] — Nothing in this section shall be construed to impair or limit the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 3; 2001-386, s. 2; 2001-448, s. 2; 2002-118, s. 2; 2003-23, s. 1; 2003-42, s. 1; 2004-6, s. 1; 2007-216, s. 2; 2008-59, s. 2.)

Effect of Amendments. —

Session Laws 2008-59, s. 2, effective July 7, 2008, substituted "Lumberton, Rocky Mount, and Wilson" for "and Lumberton" in the second paragraph of subsection (a1).

Article 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

§ 160A-460. Definitions.

Editor's Note. —

Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 21.

Miscellaneous.

§ 160A-485. Waiver of immunity through insurance purchase.

CASE NOTES

Waiver of Immunity Does Not Extend to Punitive Damages. — In an action in which a photojournalist asserted claims for false arrest and assault and battery, a city was immune from state law claims for punitive damages because there existed a limited waiver of governmental immunity found in G.S. 160A-485 after a municipality purchased liability insurance did not extend to punitive damages. Harrison v. Chalmers, 551 F. Supp. 2d 432, 2008 U.S. Dist. LEXIS 38218 (M.D.N.C. Mar. 7, 2008).

Illustrative Cases. —

City did not waive its governmental immunity to plaintiffs' negligence claim through its purchase of excess liability insurance because the excess liability insurance did not apply unless and until the city had a legal obligation to pay the $3 million self-insured amount. Pettiford v. City of Greensboro, 556 F. Supp. 2d 512, 2008 U.S. Dist. LEXIS 43157 (M.D.N.C. 2008).

City did not waive its governmental immunity to plaintiffs' negligence claim through its participation in a local government excess liability fund because the fund failed to meet the statutory requirements of a local government risk pool; two members of the fund were not local governments, no notice was given to the Commissioner of Insurance that the participating entities intended to organize and operate a risk pool, the fund did not contain a provision for a system or program of loss control, and the city had to repay the entire amount for claims between $100,000 and $3 million. Pettiford v. City of Greensboro, 556 F. Supp. 2d 512, 2008 U.S. Dist. LEXIS 43157 (M.D.N.C. 2008).

Chapter 160B.

Consolidated City-County Act.

Article 5.

Assumption of Obligations and Debt Secured By a Pledge of Faith and Credit.

Part 2. Assumption of Obligations and Debt.

§ 160B-21. Notice of enactment of consolidation; limitation of actions.

Editor's Note. — Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Chapter 161.

Register of Deeds.

Article 1.

The Office.

Sec.
161-10. Uniform fees of registers of deeds.
161-11.4. Fees for floodplain mapping.

Article 2.

The Duties.

Sec.
161-21. General index kept.
161-22. Index of registered instruments.

Article 1.

The Office.

§ 161-10. Uniform fees of registers of deeds.

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. — For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be twelve dollars ($12.00) for the first page plus three dollars ($3.00) for each additional page or fraction thereof.

When a document is presented for registration that consists of multiple instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. — For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be twenty-two dollars ($22.00) for the first page plus three dollars ($3.00) for each additional page or fraction thereof.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee.

(2) Marriage Licenses. — For issuing a license fifty dollars ($50.00); for issuing a delayed certificate with one certified copy twenty dollars ($20.00); and for a proceeding for correction of an application, license or certificate, with one certified copy ten dollars ($10.00).

(3) Plats. — For each original or revised plat recorded twenty-one dollars ($21.00) per sheet or page; for furnishing a certified copy of a plat five dollars ($5.00).

(4) Right-of-Way Plans. — For each original or amended plan and profile sheet recorded twenty-one dollars ($21.00) for the first page and five

dollars ($5.00) per page for each additional page. This fee is to be collected from the Board of Transportation.

(5) Registration of Birth Certificate One Year or More after Birth. — For preparation of necessary papers when birth to be registered in another county ten dollars ($10.00); for registration when necessary papers prepared in another county, with one certified copy ten dollars ($10.00); for preparation of necessary papers and registration in the same county, with one certified copy twenty dollars ($20.00).

(6) Amendment of Birth or Death Record. — For preparation of amendment and affecting correction ten dollars ($10.00).

(7) Legitimations. — For preparation of all documents concerned with legitimations ten dollars ($10.00).

(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. — For furnishing a certified copy of a death or birth certificate or marriage license ten dollars ($10.00). Provided however, a Register of Deeds may issue without charge a certified Birth Certificate to any person over the age of 62 years.

(8a) Vital Records Network. — For obtaining access to the Vital Records Computer Network, two dollars ($2.00).

(9) Certified Copies. — For furnishing a certified copy of an instrument for which no other provision is made by this section five dollars ($5.00) for the first page, plus two dollars ($2.00) for each additional page or fraction thereof.

(10) Comparing Copy for Certification. — For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof five dollars ($5.00).

(11) Uncertified Copies. — A register of deeds who supplies uncertified copies of instruments, or index pages, as a convenience to the public, may charge fees that the register of deeds determines bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying and/or computer equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be uniform and prominently posted in the office of the register of deeds.

(12) Notarial Acts. — For taking an acknowledgment, oath, or affirmation or performing any other notarial act the maximum fee set in G.S. 10B-31 or G.S. 10B-118 for electronic notarial acts. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing, or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

(13) Uniform Commercial Code. — Such fees as are provided for in Chapter 25, Article 9, Part 5, of the General Statutes.

(14) Torrens Registration. — Such fees as are provided in G.S. 43-5.

(15) Master Forms. — Such fees as are provided for instruments in general.

(16) Probate. — For verification of proofs and acknowledgements as provided in G.S. 47-14 two dollars ($2.00).

(17) Qualification of Notary Public. — For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10B-10 ten dollars ($10.00).

(18) Reinstatement of Articles of Incorporation. — For filing reinstatements of Articles of Incorporation prepared pursuant to G.S. 105-232; such fees as provided for instruments in general. The fee shall be paid by the corporation affected.

(18a) Nonstandard Document. — For registering or filing any document not in compliance with the recording standards adopted under G.S. 161-14(b), the fee shall be twenty-five dollars ($25.00) in addition to all other applicable recording fees.

(19) Miscellaneous Services. — For performing miscellaneous services such as faxing documents, providing laminated copies of documents, expedited delivery of documents, and similar services, the cost of the service.

(b) The uniform fees set forth in this section are complete and exclusive and no other fees shall be charged by the register of deeds.

(c) These fees shall be collected in every case prior to filing, registration, recordation, certification or other service rendered by the register of deeds unless by law it is provided that the service shall be rendered without charge. (Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; c. 247, s. 3; cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; Rev., s. 2776; 1911, c. 55, s. 3; C.S., s. 3906; 1967, c. 639, s. 4; c. 823, s. 33; 1969, c. 80, s. 1; c. 912, s. 3; 1973, c. 507, s. 5; c. 1317; 1975, c. 428; 1977, 2nd Sess., c. 1132; 1981, c. 968, ss. 1, 2; 1983, c. 894, ss. 2, 3; 1987, c. 792, ss. 2-5; 1989, c. 523, s. 1; 1991, c. 636, s. 18; c. 683, s. 3; c. 693, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 49; 1993, c. 425, s. 1; 1997-309, s. 9; 2000-167, s. 1; 2000-169, s. 44; 2001-390, s. 1; 2005-123, s. 7; 2005-391, s. 8; 2008-107, s. 29.7(a).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 29.7(a), effective October 1, 2008, and applicable to deeds of trust and mortgages registered or filed on or after that date, in subsection (a), substituted "otherwise provided in this Article" for "provided in G.S. 161-11.1 or 161-11.2" in the introductory language; and in subdivision (a)(1a), substituted "twenty-two dollars ($22.00)" for "twelve dollars ($12.00)."

§ 161-11.3. Automation Enhancement and Preservation Fund.

Editor's Note. — Session Laws 2008-118, s. 3.5, provides: "The Department of Crime Control and Public Safety shall use funds appropriated to the Department to keep and maintain the five North Carolina floodplain mapping positions that were not funded for fiscal year 2008-2009. The authority conferred by this section expires when the receipts of the Department received pursuant to G.S. 161-11.3 are sufficient to support these five positions."

§ 161-11.4. Fees for floodplain mapping.

Ten dollars ($10.00) of each fee collected by the register of deeds for registering or filing a deed of trust or mortgage pursuant to G.S. 161-10(a)(1a) must be forwarded by the register of deeds to the county finance officer, who must forward the funds to the Department of Crime Control and Public Safety to be credited to the Floodplain Mapping Fund established under G.S. 143-215.56A. The county finance officer must forward the funds to the Department on a monthly basis. (2008-107, s. 29.7(b).)

Editor's Note. — Session Laws 2008-107, s. 29.7(b), enacted this section as G.S. 161-11.3. It has been renumbered as this section at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 29.7(d), made this section effective October 1, 2008, and applicable to deeds of trust and mortgages registered or filed on or after that date.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 2.

The Duties.

§ 161-21. General index kept.

The board of county commissioners shall, at the expense of the county, maintain a consolidated index of all the deeds and other documents affecting real property in the register's office. (1868, c. 35, s. 13; Code, s. 3663; Rev., s. 2664; C.S., s. 3560; 1929, c. 327, s. 1; 1987, c. 620, s. 5; 2008-194, s. 7(d).)

Effect of Amendments. — Session Laws 2008-194, s. 7(d), effective August 8, 2008, rewrote the first sentence; and deleted the former second sentence, which provided the board of county commissioners additional authority to install the "Family" index system.

§ 161-22. Index of registered instruments.

(a) Except as otherwise provided by statute, the register of deeds shall provide and keep in the register's office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds, and other instruments required or authorized to be registered, and the indexes shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors, or obligees. The full names of parties shall be entered in the indexes in accordance with the minimum indexing standards adopted pursuant to G.S. 147-54.3(b) and (b1). Reference shall be made, opposite each name, to the book and page or other location where the instrument is registered. All instruments shall be indexed on either the temporary or permanent index within 24 hours of registration. The register of deeds is not required to index an instrument that is part of a document containing multiple instruments, as defined in G.S. 161-10(a)(1), unless the title of that instrument is shown on the first page of the document and the additional registration fee is paid as required by G.S. 161-10(a)(1).

(b) Repealed by Session Laws 2008-194, s. 7(e), effective August 8, 2008.

(c) Repealed by Session Laws 2008-194, s. 7(e), effective July 1, 2008.

(d) Deeds of trust may be indexed in the names of the grantor and beneficiary only.

(e) Certificates filed for recording pursuant to G.S. 59-2, the Uniform Limited Partnership Act, shall be indexed only under the names of the partnership and each of the general partners. The register of deeds shall cause a statement to be affixed or printed on the index page of the book or books in which limited partnership agreements are filed that the documents are indexed only in the names of the partnership and of each of the general partners.

(f) The alphabetical indexes required by this section may be maintained in index books, on index cards, on film, or in computers or other automated data-processing machines. If the index is maintained in a computer or other automated data processing machine, the register of deeds shall, at least once each month, obtain from the computer or other automated data-processing machine a printed copy on paper or film, or a tape or disk, of all index entries made since the previous printed or filmed copy, or tape or disk, was obtained. These printed or filmed copies, tapes or disks, shall be retained as security copies and may not be altered or destroyed until a subsequent security copy is made containing the index entries from all previous security copies.

(g) The register of deeds may adopt rules establishing indexing procedures and the format of the indexes. The rules shall conform with the requirements of this section and of other applicable statutes. The rules may address such subjects, by way of example and not limitation, as the indexing of business firms, the indexing of names containing numerals, and the indexing of government agencies. The rules shall be posted in at least two prominent places in the office of register of deeds and shall also be placed near the index books or in user manuals in offices using automated indexing systems.

(h) No instrument shall be deemed registered until it has been indexed in a manner to put a reasonably careful and prudent examiner on notice upon inquiry, and, if upon inquiry, the instrument would have been found.

(i) Repealed by Session Laws 2008-194, s. 7(e), effective August 8, 2008. (1876-7, c. 93, s. 1; Code, s. 3664; 1899, c. 501; Rev., ss. 2665, 3600; C.S., s. 3561; 1929, c. 327, s. 2; 1967, cc. 443, 1262; 1973, c. 1136, ss. 1, 2; 1983, c. 127; c. 699, ss. 1, 3; 1989, c. 523, s. 2; 1993, c. 178, ss. 1, 2, 4, 5; c. 539, s. 1096; 1994, Ex. Sess., c. 24, s. 14(c); 2005-123, s. 9; 2008-194, s. 7(e).)

Effect of Amendments. — Session Laws 2008-194, s. 7(e), effective August 8, 2008, in subsection (a), in the first sentence, inserted "Except as otherwise provided by statute" at the beginning, substituted "the register's" for "her or his", and made minor grammatical changes, and substituted "register of deeds is not required" for "register of deeds shall not be required" in the last sentence; deleted subsection (b) regarding use of the "Family" index system; made a minor grammatical change in subsection (e); rewrote subsections (g) and (h); and deleted subsection (i), which read: "A violation of this section shall constitute a Class 1 misdemeanor."

Session Laws 2008-194, s. 7(e), effective July 1, 2008, deleted subsection (c) regarding appropriate indexing of instruments affecting real and personal property.

Chapter 162.

Sheriff.

Article 2.

Sheriff's Bond.

§ 162-8. Bond required.

CASE NOTES

II. Liability on Bonds.

II. LIABILITY ON BONDS.

Recovery in Excess of Bond. — In a wrongful death action arising from an incident at a county jail, although the sheriff claimed that sovereign immunity entitled him to summary judgment as a matter of law to the extent plaintiffs — the decedent's mother and the administrator of his estate, sought to recover damages in excess of the sheriff's official bond under G.S. 162-8 and G.S. 58-76-5, plaintiffs' claims were not barred by exclusions in the county's liability insurance under G.S. 153A-435; although the policy excluded coverage for claims arising from criminal behavior and plaintiffs claimed the sheriff was negligent by violating G.S. 153A-224 — a Class 1 misdemeanor, other grounds were alleged for the sheriff's negligence. Myers v. Bryant, — N.C. App. —, 655 S.E.2d 882, 2008 N.C. App. LEXIS 215 (Feb. 5, 2008).

Article 3.

Duties of Sheriff.

§ 162-14. Duty to execute process.

Local Modification. — Bertie, Martin: 2008-79, s. 1.

Chapter 162A.

Water and Sewer Systems.

Article 1.

Water and Sewer Authorities.

§ 162A-1. Title.

Editor's Note. —

Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 2.

Regional Water Supply Planning.

§ 162A-21. Preamble.

Allocation of Surface Water Resources Study. — Session Laws 2007-518, s. 1(a), as amended by Session Laws 2008-10, s. 1, provides: "The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall study the allocation of surface water resources and their availability and maintenance in the State, including issues related to the transfer of water from one river basin to another, the withdrawal of water for consumptive use, and the accuracy and tolerance of equipment used to measure the flow of water transferred from one river basin to another river basin. The Commission shall evaluate the benefits of establishing formal and informal procedures for negotiating transfers of water from one river basin to another. The Commission shall also study and recommend measures to: (i) ensure that the purposes of the Regional Water Supply Planning Act of 1971, as set out in G.S. 162A-21, are fulfilled; (ii) provide for a comprehensive system for regulating surface water withdrawals for consumptive and nonconsumptive uses; (iii) provide for the establishment of a statewide plan for water resources development projects; (iv) provide for adequate resources for the Department so that it may develop and implement a comprehensive approach to water resources management; (v) ensure that all State laws regulating water resources are consistent with and fully integrated into the comprehensive system for regulating surface water withdrawals and the statewide plan for water resources development projects; and (vi) ensure that potential interstate conflicts related to water resources are avoided or minimized. In the conduct of this study, the Environmental Review Commission may employ independent consultants as provided in G.S. 120-32.02 and G.S. 120-70.44. The Environmental Review Commission may submit interim reports to the 2008 and 2009 regular sessions of the General Assembly and shall submit a final report of its findings and recommendations, including any legislative proposals, to the General Assembly on or before 1 October 2010."

Session Laws 2008-125, s. 2, provides: "As a part of the study by the Environmental Review Commission of the allocation of water resources in this State pursuant to subsection (a) of Section 1 of S.L. 2007-518, the Environmental Review Commission shall study the delineation of major river basins and subbasins within the State. The Commission shall determine whether the definition of 'river basin' set out in G.S. 143-215.22G and the accompanying map should be revised. The Commission shall report its findings and recommendations as provided in subsection (a) of Section 1 of S.L. 2007-518, as amended."

Session Laws 2008-143, s. 6, provides: "The Environmental Review Commission, as part of its ongoing study of the allocation of water resources in the State required by Section 1 of S.L. 2007-518, shall study issues related to increasing water supply, including issues related to reservoir construction and State laws and rules governing reservoir construction. The Environmental Review Commission shall report its findings and recommendations, including any legislative proposals, to the General Assembly as provided by Section 1 of S.L. 2007-518, as amended."

ARTICLE 4.

Metropolitan Water Districts.

§ 162A-31. Short title.

Editor's Note. —

Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

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Editor's Note. —

Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

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SUBCHAPTER II. ELECTION OFFICERS.

Article 4.

County Boards of Elections.

§ 163-33.1. Power of chairman to administer oaths.

The chairman of the county board of elections is authorized to administer to election officials specified in Articles 4, 5, and 20 of this Chapter the required oath, and may also administer the required oath to witnesses appearing before the county board at a duly called public hearing. (1981, c. 154; 2007-391, s. 5; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 5, is effective August 19, 2007.

ARTICLE 5.

Precinct Election Officials.

§ 163-45. Observers; appointment.

The chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chair contains the names of all persons authorized to represent such chair's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the chair of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the county for which appointed and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chair of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chair shall deliver one copy of the list to the chief judge for each affected precinct. The chair shall retain the other copy. The chair, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chair of the county board of elections or the person making the substitute appointment.

If party chairs appoint observers at one-stop sites under G.S. 163-227.2, those party chairs shall provide a list of the observers appointed before 10:00 A.M. on the fifth day before the observer is to observe.

An observer shall do no electioneering at the voting place, and shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting a ballot, but, subject to these restrictions, the chief judge and judges of elections shall permit the observer to make such observation and take such notes as the observer may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an "authorization to vote document" instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart.

Instead of having an observer receive the voting list, the county party chair may send a runner to do so, even if an observer has not been appointed for that precinct. The runner may be the precinct party chair or any person named by the county party chair. Each county party chair using runners in an election shall provide to the county board of elections before 10:00 A.M. on the fifth day before election day a list of the runners to be used. That party chair must notify the chair of the county board of elections or the board chair's designee of the names of all runners to be used in each precinct before the runner goes to the precinct. The runner may receive a voter list from the precinct on the same schedule as an observer. Whether obtained by observer or runner, each party is entitled to only one voter list at each of the scheduled times. No runner may enter the voting enclosure except when necessary to announce that runner's presence and to receive the list. The runner must leave immediately after being provided with the list. (1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 14, 94; 1977, c. 453; 1991, c. 727, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 19; 1995 (Reg. Sess., 1996), c. 688, s. 1; c. 734, s. 4.1; 2005-428, s. 1(a); 2007-391, s. 22; 2008-187, s. 33(a).)

Editor's Note. —

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 22, is effective August 19, 2007.

SUBCHAPTER III. QUALIFYING TO VOTE.

ARTICLE 6.

Qualifications of Voters.

§ 163-55. Qualifications to vote; exclusion from electoral franchise.

(a) Residence Period for State Elections. — Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct, ward, or other election district in which the person offers to vote for 30 days next preceding an election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to vote in any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until 30 days after the person's removal.

Except as provided in G.S. 163-59, the following classes of persons shall not be allowed to vote in this State:

(1) Persons under 18 years of age.

(2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(b) Precincts and Election Districts. — For purposes of qualification to vote in an election, a person's residence in a precinct, ward, or election district shall be determined in accordance with G.S. 163-57. When an election district encompasses more than one precinct, then for purposes of those offices to be elected from that election district a person shall also be deemed to be resident in the election district which includes the precinct in which that person resides. An election district may include a portion of a county, an entire county, a portion of the State, or the entire State. When a precinct has been divided among two or more election districts for purposes of elections to certain offices, then with respect to elections to those offices a person shall be deemed to be resident in only that election district which includes the area of the precinct in which that person resides. Qualification to vote in referenda shall be treated the same as qualification for elections to fill offices.

(c) Elections. — For purposes of the 30-day residence requirement to vote in an election in subsection (a) of this section, the term "election" means the day of the primary, second primary, general election, special election, or referendum. (19th amendt. U.S. Const.; amendt. State Const., 1920; 1901, c. 89, ss. 14, 15; Rev., ss. 4315, 4316; C.S., ss. 5936, 5937; Ex. Sess. 1920, c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 18; 2005-2, s. 2; 2008-150, s. 5(a).)

Effect of Amendments. — Session Laws 2008-150, s. 5(a), effective August 2, 2008, added subsection (c).

§ 163-59. Right to participate or vote in party primary.

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he:

(1) Is a registered voter, and

(2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and

(3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-119 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age to register and vote in the general election or regular municipal election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general or regular municipal election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election or regular municipal election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. (1915, c. 101, s. 5; 1917, c. 218; C.S., s. 6027; 1959, c. 1203, s. 6; 1967, c. 775, s. 1; 1971, c. 1166, s. 4; 1973, c. 793, s. 20; 1981, c. 33, s. 1; 1983, c. 324, s. 3; 1987, c. 408, s. 4; c. 457, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 5; 1993 (Reg. Sess., 1994), c. 762, s. 23; 2007-391, s. 28; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 28, is effective August 19, 2007.

Article 7A.

Registration of Voters.

§ 163-82.4. Contents of application form.

(a) Information Requested of Applicant. — The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,
(2) Date of birth,
(3) Residence address,
(4) County of residence,
(5) Date of application,
(6) Gender,
(7) Race,
(7a) Ethnicity,
(8) Political party affiliation, if any, in accordance with subsection (c) of this section,
(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
(10) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. — The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. — The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(13).
(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.
(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will

remain confidential and will be used only for voter registration purposes.

(c) Party Affiliation or Unaffiliated Status. — The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(d) Citizenship and Age Questions. — Voter registration application forms shall include all of the following:

(1) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(2) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

(3) The statement "If you checked 'no' in response to either of these questions, do not complete this form."

(e) Correcting Registration Forms. — If the voter fails to complete any required item on the voter registration form but provides enough information on the form to enable the county board of elections to identify and contact the voter, the voter shall be notified of the omission and given the opportunity to complete the form at least by 5:00 P.M. on the day before the county canvass as set in G.S. 163-182.5(b). If the voter corrects that omission within that time and is determined by the county board of elections to be eligible to vote, the board shall permit the voter to vote. If the information is not corrected by election day, the voter shall be allowed to vote a provisional official ballot. If the correct information is provided to the county board of elections by at least 5:00 P.M. on the day before the county canvass, the board shall count any portion of the provisional official ballot that the voter is eligible to vote. (1901, c. 89, s. 12; Rev., s. 4319; C.S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 6; 1973, c. 793, s. 27; c. 1223, s. 3; 1975, c. 234, s. 2; 1979, c. 135, s. 1; c. 539, ss. 1-3; c. 797, ss. 1, 2; 1981, c. 222; c. 308, s. 2; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1999-424, s. 7(c), (d); 1999-453, s. 8(a); 2003-226, s. 9; 2004-127, s. 4; 2005-428, s. 15; 2007-391, s. 20; 2008-187, s. 33(a).)

Editor's Note. —
Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 20, is effective August 19, 2007.

§ 163-82.6. Acceptance of application forms.

(a) How the Form May Be Submitted. — The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail, facsimile transmission, transmission of a scanned document, or in person. The applicant may delegate the submission of the form to another person. Any person who communicates to an applicant acceptance of that delegation shall deliver that form so that it is received by the appropriate county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be a Class 2 misdemeanor for any person to communicate to the applicant acceptance of that delegation and then fail to make a good faith effort to deliver the form so that it is received by the county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be an affirmative defense to a charge of failing to make a good faith effort to deliver a delegated form by the registration deadline that the delegatee informed the applicant that the form would not likely be delivered in time for the applicant to vote in the next election. It shall be a Class 2 misdemeanor for any person to sell or attempt to sell a completed voter registration form or to condition its delivery upon payment.

(a1) Misdemeanors. — It shall be a Class 2 misdemeanor for any person to do any of the following:

(1) To communicate to the applicant acceptance of the delegation described in subsection (a) of this section and then fail to make a good faith effort to deliver the form so that it is received by the county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be an affirmative defense to a charge of failing to make a good faith effort to deliver a delegated form by the registration deadline that the delegatee informed the applicant that the form would not likely be delivered in time for the applicant to vote in the next election.

(2) To sell or attempt to sell a completed voter registration form or to condition its delivery upon payment.

(3) To change a person's information on a voter registration form prior to its delivery to a county board of elections.

(4) To coerce a person into marking a party affiliation other than the party affiliation the person desires.

(5) To offer a person a voter registration form that has a party affiliation premarked unless the person receiving the form has requested the premarking.

(b) Signature. — The form shall be valid only if signed by the applicant. An electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used.

(c) Registration Deadlines for a Primary or Election. — In order to be valid for a primary or election, except as provided in G.S. 163-82.6A, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the primary or election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the primary or election,

(2) If submitted in person, by facsimile transmission, or by transmission of a scanned document, must be received by the county board of elections by a time established by that board, but no earlier than 5:00 P.M., on the twenty-fifth day before the primary or election,

(3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to the delegatee not later than 25 days before the primary or election, except as provided in subsection (d) of this section.

(c1) If the application is submitted by facsimile transmission or transmission of a scanned document, a permanent copy of the completed, signed form shall be delivered to the county board no later than 20 days before the election.

(d) Instances When Person May Register and Vote on Primary or Election Day. — If a person has become qualified to register and vote between the twenty-fifth day before a primary or election and primary or election day, then that person may apply to register on primary or election day by submitting an application form described in G.S. 163-82.3(a) or (b) to:

(1) A member of the county board of elections;
(2) The county director of elections; or
(3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be permitted to vote in the primary or election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of primary or election day applications to register. No person shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary.

(e) For purposes of subsection (d) of this section, persons who "become qualified to register and vote" during a time period:

(1) Include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony; but
(2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period. (1901, c. 89, ss. 18, 21; Rev., ss. 4322, 4323; C.S., ss. 5946, 5947; 1923, c. 111, s. 3; 1933, c. 165, s. 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, ss., 3, 4; 1961, c. 382; 1963, c. 303, ss. 1, 2; 1967, c. 761, s. 3; c. 775, s. 1; 1969, c. 750, ss. 1, 2; 1977, c. 626, s. 1; 1979, c. 539, s. 5; c. 766, s., 2; 1981, c. 33, s. 2; 1981 (Reg. Sess., 1982), c. 1265, s. 6; 1983, c. 553; 1985, c. 260, s. 1; 1991, c. 363, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 1; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 243, s. 1; 1997-456, s. 27; 1999-426, s. 1(a), (b); 2001-315, s. 1; 2001-319, s. 6(a); 2003-226, s. 4; 2004-127, s. 9(a); 2007-253, s. 2; 2007-391, s. 16(a); 2008-150, s. 5(d), (e).)

Effect of Amendments. —

Session Laws 2008-150, s. 5(d) and (e), effective August 2, 2008, in subsections (c) and (d), substituted "a primary or election" for "an election" each time it appears in the introductory language, and inserted "primary or" before "election" throughout.

§ 163-82.10. Official record of voter registration.

(a) Official Record. — The State voter registration system is the official voter registration list for the conduct of all elections in the State. A completed and signed registration application form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter. Full or partial social security numbers, dates of birth, the identity of the public agency at which the voter registered under G.S. 163-82.20, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Cumulative data based on those items of information may be publicly disclosed as long as information about any individual cannot be discerned from the disclosed data. Disclosure of information in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of information in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The signature of the voter, either on the paper application or an electronically captured image of it, may be viewed by the public but may not be copied or traced except by election officials for election administration purposes. Any such copy or tracing is not a public record. The county board of elections shall maintain custody of any paper hard copy registration records of voters in the county and shall keep them in a place where they are secure.

(a1) Paperless, Instant Electronic Transfer. — The application described in G.S. 163-82.3 may be either a paper hard copy or an electronic document.

(b) Access to Registration Records. — Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. No list produced under this section shall contain a voter's date of birth. However, lists may be produced according to voters' ages. Both the following shall apply to all counties:

(1) The county board of elections shall make the voter registration information available to the public on electronic or magnetic medium. For purposes of this section, "electronic or magnetic medium" means any of the media in use by the State Board of Elections at the time of the request.

(2) Information requested on electronic or magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age but not date of birth, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable category.

The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00).

(c) Free Lists. — A county board shall provide, upon written request, one free list of all the registered voters in the county to the State chair of each political party and to the county chair of each political party once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year. Each free list shall include the name, address, gender, age but not date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. All free lists shall be provided as soon as practicable on one of any electronic or magnetic media, but no later than 30 days after written request. Each State party chair shall provide the information on the media received from the county boards or a copy of the media containing the data itself to candidates of that party who request the data in writing. As used in this section, "political party" means a political party as defined in G.S. 163-96.

(d) Exception for Address of Certain Registered Voters. — Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, accompanied by a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this subsection is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. It is the responsibility of the voter to provide the county board with a copy of the valid protective order in effect or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes. The voter's actual address shall be used for any election-related purpose by any board of elections. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order. It shall not be a violation of this section if the address of a voter who is participating in the Address Confidentiality Program is discovered by a member of the public in public records disclosed by a county board of elections prior to December 1, 2001. Addresses required to be kept confidential by this section shall not be made available to the jury commission under the provisions of G.S. 9-2. (1901, c. 89, s. 83; Rev., s. 4382; C.S., s. 6016; 1931, c. 80; 1939, c. 263, s. 31/2; 1949, c. 916, ss. 6, 7; 1953, c. 843; 1955, c. 800; 1959, c. 883; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 22, 25; 1975, c. 12; c. 395; 1979, 2nd Sess., c. 1242; 1981, c. 39, s. 1; c. 87, s.1; c. 308, s. 1; c. 656; 1983, c. 218, ss. 1, 2; 1985, c. 211, ss. 1, 2; c. 472, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995 (Reg. Sess., 1996), c. 688, s. 2; 2001-396, s. 1; 2002-171, s. 8; 2003-226, ss. 2, 3; 2003-278, s. 6; 2004-127, s. 17(c); 2005-428, s. 10(a), (b); 2007-391, s. 19; 2008-187, s. 33(a).)

Editor's Note. —

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 20, is effective August 19, 2007.

§ 163-82.12. Promulgation of guidelines relating to computerized voter registration.

The State Board of Elections shall make all guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These guidelines shall include provisions for all of the following:

(1) Establishing, developing, and maintaining a computerized central voter registration file.
(2) Linking the central file through a network with computerized voter registration files in each of the counties.
(3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration applications.
(4) Protecting and securing the data.
(5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.
(6) Enabling the statewide system to determine whether the voter identification information provided by an individual is valid.
(7) Enabling the statewide system to interact electronically with the Division of Motor Vehicles system to validate identification information.
(8) Enabling the Division of Motor Vehicles to provide real-time interface for the validation of the drivers license number and last four digits of the social security number.
(8b) Notifying voter-registration applicants whose drivers license or last four digits of social security number does not result in a validation, attempting to resolve the discrepancy, initiating investigations under G.S. 163-33(3) or challenges under Article 8 of this Chapter where warranted, and notifying any voters of the requirement under G.S. 163-166.2(b2) to present identification when voting.
(9) Enabling the statewide system to assign a unique identifier to each legally registered voter in the State.
(10) Enabling the State Board of Elections to assist the Division of Motor Vehicles in providing to the jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records.

These guidelines shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the guidelines and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those guidelines shall be made available to the public upon request or otherwise by the State Board. (1993 (Reg. Sess., 1994), c. 762, s. 2; 2003-226, s. 7(a); 2007-391, s. 21(b); 2008-187, s. 33(a).)

Editor's Note. —

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 20, is effective August 19, 2007.

§ 163-82.14. List maintenance.

(a) Uniform Program. — The State Board of Elections shall adopt a uniform program that makes a reasonable effort:

(1) To remove the names of ineligible voters from the official lists of eligible voters, and

(2) To update the addresses and other necessary data of persons who remain on the official lists of eligible voters.

That program shall be nondiscriminatory and shall comply with the provisions of the Voting Rights Act of 1965, as amended, and with the provisions of the National Voter Registration Act. The State Board of Elections, in addition to the methods set forth in this section, may use other methods toward the ends set forth in subdivisions (1) and (2) of this subsection, including address-updating services provided by the Postal Service. Each county board of elections shall conduct systematic efforts to remove names from its list of registered voters in accordance with this section and with the program adopted by the State Board. The county boards of elections shall complete their list maintenance mailing program by April 15 of every odd-numbered year, unless the State Board of Elections approves a different date for the county.

(b) Death. — The Department of Health and Human Services shall furnish free of charge to the State Board of Elections every month, in a format prescribed by the State Board of Elections, the names of deceased persons who were residents of the State. The State Board of Elections shall distribute every month to each county board of elections the names on that list of deceased persons who were residents of that county. The Department of Health and Human Services shall base each list upon information supplied by death certifications it received during the preceding month. Upon the receipt of those names, each county board of elections shall remove from its voter registration records any person the list shows to be dead. The county board need not send any notice to the address of the person so removed.

(c) Conviction of a Felony. —

(1) Report of Conviction Within the State. — The State Board of Elections, on or before the fifteenth day of every month, shall report to the county board of elections of that county the name, county of residence, and residence address if available, of each individual against whom a final judgment of conviction of a felony has been entered in that county in the preceding calendar month.

(2) Report of Federal Conviction. — The Executive Director of the State Board of Elections, upon receipt of a notice of conviction sent by a United States Attorney pursuant to section 8(g) of the National Voter Registration Act, shall notify the appropriate county boards of elections of the conviction.

(3) County Board's Duty Upon Receiving Report of Conviction. — When a county board of elections receives a notice pursuant to subdivision (1) or (2) of this subsection relating to a resident of that county and that person is registered to vote in that county, the board shall, after giving 30 days' written notice to the voter at his registration address, and if the voter makes no objection, remove the person's name from its registration records. If the voter notifies the county board of elections of his objection to the removal within 30 days of the notice, the chairman of the board of elections shall enter a challenge under G.S. 163-85(c)(5), and the notice the county board received pursuant to this subsection shall be prima facie evidence for the preliminary hearing that the registrant was convicted of a felony.

(d) Change of Address. — A county board of elections shall conduct a systematic program to remove from its list of registered voters those who have moved out of the county, and to update the registration records of persons who have moved within the county. The county board shall remove a person from its list if the registrant:

(1) Gives confirmation in writing of a change of address for voting purposes out of the county. "Confirmation in writing" for purposes of this subdivision shall include:

a. A report to the county board from the Department of Transportation or from a voter registration agency listed in G.S. 163-82.20 that the voter has reported a change of address for voting purposes outside the county;
b. A notice of cancellation received under G.S. 163-82.9; or
c. A notice of cancellation received from an election jurisdiction outside the State.

(2) Fails to respond to a confirmation mailing sent by the county board in accordance with this subdivision and does not vote or appear to vote in an election beginning on the date of the notice and ending on the day after the date of the second general election for the United States House of Representatives that occurs after the date of the notice. A county board sends a confirmation notice in accordance with this subdivision if the notice:
a. Is a postage prepaid and preaddressed return card, sent by forwardable mail, on which the registrant may state current address;
b. Contains or is accompanied by a notice to the effect that if the registrant did not change residence but remained in the county, the registrant should return the card not later than the deadline for registration by mail in G.S. 163-82.6(c)(1); and
c. Contains or is accompanied by information as to how the registrant may continue to be eligible to vote if the registrant has moved outside the county.

A county board shall send a confirmation mailing in accordance with this subdivision to every registrant after every congressional election if the county board has not confirmed the registrant's address by another means.

(3) Any registrant who is removed from the list of registered voters pursuant to this subsection shall be reinstated if the voter appears to vote and gives oral or written affirmation that the voter has not moved out of the county but has maintained residence continuously within the county. That person shall be allowed to vote as provided in G.S. 163-82.15(f). (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 25, 28; c. 1223, s. 4; 1975, c. 395; 1977, c. 265, s. 3; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1; 1983, c. 411, ss. 1, 2; 1985, c. 211, ss. 1, 2; 1987, c. 691, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1997-443, s. 11A.117; 1999-453, s. 7(a), (b); 2001-319, ss. 8(a), 11; 2005-428, s. 14; 2007-391, ss. 18, 32; 2008-187, s. 33(a).)

Editor's Note. —
Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 20, is effective August 19, 2007.

ARTICLE 8.

Challenges.

§ 163-85. Challenge procedure other than on day of primary or election.

CASE NOTES

Motion for Recusal. — County board of elections violated a voter's due process rights when the board failed to address a motion for recusal by the voter that was supported by affidavits establishing a reasonable basis to challenge the impartiality of a member of the board in a challenge to the voter's registration. Knight v. Higgs, — N.C. App. —, 659 S.E.2d 742, 2008 N.C. App. LEXIS 702 (2008).

§ 163-86. Hearing on challenge.

(a) A challenge made under G.S. 163-85 shall be heard and decided before the date of the next primary or election, except that if the board finds that because of the number of challenges, it cannot hold all hearings before the date of the election, it may order the challenges to be heard and decided at the next time the challenged person appears and seeks to vote, as if the challenge had been filed under G.S. 163-87. Unless the hearing is ordered held under G.S. 163-87, it shall be heard and decided by the board of elections.

(b) At least 10 days prior to the hearing scheduled under G.S. 163-86(c), the board of elections shall mail by first-class mail, a written notice of the challenge to the challenged voter, to the address of the voter listed in the registration records of the county. The notice shall state succinctly the grounds asserted, and shall state the time and place of the hearing. If the hearing is to be held at the polls, the notice shall state that fact and shall list the date of the next scheduled election, the location of the voter's polling place, and the time the polls will be open. A copy of the notice shall be sent to the person making the challenge and to the chairman of each political party in the county.

(c) At the time and place set for the hearing on a challenge entered prior to the date of a primary or election, the county board of elections shall explain to the challenged registrant the qualifications for registration and voting in this State. The board chairman, or in his absence the board secretary, shall then administer the following oath to the challenged registrant:

"You swear (or affirm) that the statements and information you shall give in this hearing with respect to your identity and qualifications to be registered and to vote shall be the truth, the whole truth, and nothing but the truth, so help you, God."

After swearing the challenged registrant, the board shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, the board shall tender to him the following oath or affirmation:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age or will become 18 by the date of the next general election; that you have or will have resided in this State and in the precinct for which registered for 30 days by the date of the next primary or election; that you are not disqualified from voting by the Constitution or the laws of this State; that your name is ________, and that in such name you were duly registered as a voter of ________ precinct; and that you are the person you represent yourself to be, so help you, God."

If the challenged registrant refuses to take the tendered oath, or submit to the board the affidavit required by subsection (d), below, the challenge shall be sustained. If the challenged registrant takes the tendered oath, the board may, nevertheless, sustain the challenge if it finds the challenged registrant is not a legal voter.

The board, in conducting hearings on challenges, shall have authority to subpoena any witnesses it may deem appropriate, and administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the persons challenged.

(d) Appearance by Challenged Registrant. — The challenged registrant shall appear in person at the challenge hearing. If he is unable to appear in person, he may be represented by another person and must tender to the county board of elections an affidavit that he is a citizen of the United States, is at least 18 years of age or will become 18 by the date of the next general election, has or will have resided in this State and in the precinct for which registered for 30 days by the date of the next primary or election, is not disqualified from voting by the Constitution or laws of this State, is named ________ and was duly registered as a voter of ________ precinct in such name, and is the person represented to be by the affidavit. (1901, c. 89, s. 22; Rev., s. 4340; C.S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 35; 1979, c. 357, s. 2; 2008-150, s. 5(b).)

Effect of Amendments. — Session Laws 2008-150, s. 5(b), effective August 2, 2008, substituted "next primary or election" for "next general election" in the third paragraph of subsection (c) and in the last sentence of subsection (d).

CASE NOTES

Motion for Recusal. — County board of elections violated a voter's due process rights when the board failed to address a motion for recusal by the voter that was supported by affidavits establishing a reasonable basis to challenge the impartiality of a member of the board in a challenge to the voter's registration. Knight v. Higgs, — N.C. App. —, 659 S.E.2d 742, 2008 N.C. App. LEXIS 702 (2008).

§ 163-90.2. Action when challenge sustained, overruled, or dismissed.

CASE NOTES

Applied in Knight v. Higgs, — N.C. App. —, 659 S.E.2d 742, 2008 N.C. App. LEXIS 702 (2008).

SUBCHAPTER IV. POLITICAL PARTIES.

Article 9.

Political Party Definition.

§ 163-98. (Effective January 1, 2009) General election participation by new political party.

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ballots upon paying a filing fee equal to that provided for candidates for the office in G.S. 163-107 or upon complying with the alternative available to candidates for the office in G.S. 163-107.1.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates in the ensuing general election. Any candidate nominated by a new party shall be affiliated with the party at the time of certification to the State Board of Elections. The requirement of affiliation with the party will be met if the candidate submits at or before the time of certification as a candidate an application to change

G.S. 163-98 is set out twice. See notes.

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party affiliation to that party. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board of Elections shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot. (1901, c. 89, s. 85; Rev., s. 4292; C.S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1; 1979, c. 411, s. 4; 2002-159, s. 55(b); 2006-234, s. 3; 2008-150, s. 10.1(a).)

Section Set Out Twice. — The section above is effective January 1, 2009. For the section in effect until January 1, 2009, see the main volume.

Effect of Amendments. — Session Laws 2008-150, s. 10.1(a), effective January 1, 2009, and applicable to elections held on or after that date, inserted the third and fourth sentences in the second paragraph.

SUBCHAPTER V. NOMINATION OF CANDIDATES.

Article 10.

Primary Elections.

§ 163-119. Voting by unaffiliated voter in party primary.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 7 was codified as this section at the direction of the Revisor of Statutes.

§ 163-122. Unaffiliated candidates nominated by petition.

(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. — Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the

chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

(2) If the office is a district office under the jurisdiction of the State Board of Elections under G.S. 163-182.4(b), file written petitions with the State Board of Elections supporting that voter's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification and deadline for submission to the county board shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with Article 14A of this Chapter.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year.

(b) Form of Petition. — Petitions requesting an unaffiliated candidate to be placed on the general election ballot shall contain on the heading of each page of the petition in bold print or in all capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN ____________ COUNTY

HEREBY PETITION ON BEHALF OF ________________ AS AN UNAFFILIATED CANDIDATE FOR THE OFFICE OF ________________ IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE APPROPRIATE BALLOT UPON COMPLIANCE WITH THE PROVISIONS CONTAINED IN G.S. 163-122."

(c) This section does not apply to elections under Article 25 of this Chapter.

(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes.

(e) Any candidate seeking to have that candidate's name printed on the general election ballot under this section shall pay a filing fee equal to that provided for candidates for the office in G.S. 163-107 or comply with the alternative available to candidates for the office in G.S. 163-107.1. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236; 1967, c. 775, s. 1; 1973, c. 793, s. 50; 1977, c. 408, s. 3; 1979, c. 23, ss. 1, 3; c. 534, s. 2; 1981, c. 637; 1991, c. 297, s. 1; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 14; 1999-424, s. 5(b); 2002-159, s. 21(b); 2004-127, s. 8(a); 2006-155, s. 3; 2006-234, ss. 4, 5; 2007-391, s. 8(a); 2007-484, s. 21; 2008-187, s. 33(a).)

Editor's Note. —

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 8(a) is effective August 19, 2007.

Effect of Amendments. —

Session Laws 2007-391, s. 8(a), effective August 19, 2007, in subdivision (a)(2), substituted "under the jurisdiction of the State Board of Elections under G.S. 163-182.4(b)" for "comprised of two or more counties" and "that voter's" for "his" in the first sentence of subdivision (a)(2).

§ 163-123. Declaration of intent and petitions for write-in candidates in partisan elections.

(a) Procedure for Qualifying as a Write-In Candidate. — Any qualified voter who seeks to have write-in votes for him counted in a general election shall file a declaration of intent in accordance with subsection (b) of this section and petition(s) in accordance with subsection (c) of this section.

(b) Declaration of Intent. — The applicant for write-in candidacy shall file his declaration of intent at the same time and with the same board of elections as his petition, as set out in subsection (c) of this section. The declaration shall contain:

(1) Applicant's name,
(2) Applicant's residential address,
(3) Declaration of applicant's intent to be a write-in candidate,
(4) Title of the office sought,
(5) Date of the election,
(6) Date of the declaration,
(7) Applicant's signature.

(c) Petitions for Write-in Candidacy. — An applicant for write-in candidacy shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon on the 90th day before the general election. They shall be signed by 500 qualified voters of the State. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. Provided the petitions are timely submitted, the chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented.

(2) If the office is a district office under the jurisdiction of the State Board of Elections under G.S. 163-182.4(b), file written petitions with the State Board of Elections supporting that applicant's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before noon on the 90th day before the general election and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(3) If the office is a county office, or is a school administrative unit office elected on a partisan basis, or is a legislative district consisting of a single county or a portion of a county, file written petitions with the county board of elections supporting his candidacy for a specified office. A petition presented to a county board of elections shall contain only names of voters registered in that county. These petitions must be filed on or before noon on the 90th day before the general election and must be signed by 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 persons are eligible to vote for the office as shown by the most recent records of the appropriate board of elections. If fewer than 5,000 persons are eligible to vote for the office, an applicant's petition must be signed by not less than one percent (1%) of those registered voters. Before being filed with the county board of elections, each petition shall be presented to the county board of elections for examination. The chairman of the county board of elections shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(d) Form of Petition. — Petitions requesting the qualification of a write-in candidate in a general election shall contain on the heading of each page of the petition in bold print or in capital letters the words: "THE UNDERSIGNED

REGISTERED VOTERS IN ________________ COUNTY HEREBY PETITION ON BEHALF OF ________________________________ AS A WRITE-IN CANDIDATE IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE LIST OF QUALIFIED WRITE-IN CANDIDATES WHOSE VOTES ARE TO BE COUNTED AND RECORDED IN ACCORDANCE WITH G.S. 163-123."

(e) Defeated Primary Candidate. — No person whose name appeared on the ballot in a primary election preliminary to the general election shall be eligible to have votes counted for him as a write-in candidate for the same office in that year.

(f) Counting and Recording of Votes. — If a qualified voter has complied with the provisions of subsections (a), (b), and (c) and is not excluded by subsection (e), the board of elections with which petition has been filed shall count votes for him according to the procedures set out in G.S. 163-182.1, and the appropriate board of elections shall record those votes on the official abstract. Write-in votes for names other than those of qualified write-in candidates shall not be counted for any purpose and shall not be recorded on the abstract.

(f1) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes.

(g) Municipal and Nonpartisan Elections Excluded. — This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections except for elections under Article 25 of this Chapter. (1987, c. 393, ss. 1; 2; 1989, c. 92, s. 1; 1999-424, s. 5(c); 2001-319, s. 9(a); 2001-398, s. 7; 2001-403, s. 12; 2002-158, s. 13; 2004-127, s. 7; 2006-155, s. 4; 2007-391, s. 8(b); 2008-187, s. 33(a).)

Editor's Note. —

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 8(b) is effective August 19, 2007.

Effect of Amendments. —

Session Laws 2007-391, s. 8(b), effective August 19, 2007, in subdivision (c)(2), substituted "under the jurisdiction of the State Board of Elections under G.S. 163-182.4(b)" for "comprising all or part of two or more counties" and "that applicant's" for "his" in the first sentence.

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

ARTICLE 12A.

Precinct Boundaries.

§ 163-132.1B. Participation in 2010 Census Redistricting Data Program of the United States Bureau of the Census.

(a) Purpose. — The State of North Carolina shall participate in the 2010

Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, so that the State will receive 2010 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(a1) Reporting of Voting Tabulation Districts. — The Executive Director of the State Board of Elections shall report to the Bureau of the Census as this State's voting tabulation districts the voting precincts as of January 1, 2008. Before making that report, the Executive Director shall consult with the Legislative Services Office concerning the accuracy of the voting precincts to be reported. The Legislative Services Office shall submit to the Executive Director its opinion as to whether the description of the precincts to be reported to the Bureau of the Census is accurate. The Executive Director shall submit the report to the Bureau of the Census in time to comply with the deadlines of that Bureau for the 2010 Census Redistricting Data Program.

(a2) Reporting From Unchanged Voting Tabulation Districts. — After January 1, 2008, every county board of elections shall report all election returns by voting tabulation districts as required by G.S. 163-132.5G. For purposes of this section and G.S. 163-132.5G, "voting tabulation districts" shall be the precincts as of January 1, 2008. No county board of elections may alter the voting tabulation districts reported to the Census Bureau by the Executive Director of the State Board of Elections. The county board of elections may change the boundaries of the county's precincts so that those precincts differ from the county's voting tabulation districts, but only to the extent permitted by G.S. 163-132.3.

(b) Additional Rules. — In addition to directives promulgated by the Executive Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section. (2006-264, s. 75.5(b); 2007-391, s. 6(a); 2008-187, s. 33(b).)

Editor's Note. —

Session Laws 2007-391, s. 6(f), as amended by Session Laws 2008-187, s. 33(b), provides: "Subsections 6(b) through 6(e) of this section become effective January 1, 2008. The remainder of the section is effective when this act becomes law [August 19, 2007]."

§ 163-132.3. Alterations to approved precinct boundaries.

(a) No county board of elections may change any precinct boundary unless the Executive Director of the State Board of Elections determines that the county board has a current capability of complying with G.S. 163-132.1B(a2) by reporting all election returns by voting tabulation district as required by G.S. 163-132.5G. If the Executive Director so determines, the county board may make any changes to precinct boundaries, provided that all proposed new precincts shall consist solely of contiguous territory. The State Board of Elections may set uniform standards for precinct boundaries, which the county boards of elections shall follow. The county board of elections shall report every change in precinct boundary to the Executive Director in a format required by the Executive Director.

The county boards of elections shall report precinct boundary changes to the Executive Director in the manner the Executive Director directs. No newly created or altered precinct boundary is effective until approved by the Executive Director of the State Board as being in compliance with this section.

(b) The Executive Director of the State Board of Elections shall examine the maps of the proposed new or altered precincts and any required written descriptions. If the Executive Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, the Executive Director shall not approve those precinct boundaries. The Executive Director shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval.

(d) Repealed by Session Laws 2004-127, s. 1(a), effective August 15, 2004, and applicable to precincts established or changed on or after that date.

(e) Repealed by Session Laws 2007-391, s. 6(b), effective January 1, 2008. (1985, c. 757, s. 205(a); 1987 (Reg. Sess., 1988), c. 1074, s. 2; 1991 (Reg. Sess., 1992), c. 927, s. 1; 1993, c. 352, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 71; 1995, c. 423, ss. 2, 3; 1999-227, ss. 1, 2; 2001-319, ss. 10.1, 11; 2001-487, s. 96; 2002-159, s. 56; 2003-434, 1st Ex. Sess., s. 13; 2004-127, s. 1(a); 2007-391, s. 6(b); 2008-187, s. 33(b).)

Editor's Note. —
Session Laws 2007-391, s. 6(f), as amended by Session Laws 2008-187, s. 33(b), provides in part: "Subsections 6(b) through 6(e) of this section become effective January 1, 2008."

§ 163-132.5F. U.S. Census data by voting tabulation district.

The State shall request the U.S. Bureau of the Census for each decennial census to provide summaries of census data by voting tabulation district and shall participate in any U.S. Bureau of the Census' program to effectuate this provision. (1991 (Reg. Sess., 1992), c. 927, s. 1; 2007-391, s. 6(e); 2008-187, s. 33(b).)

Editor's Note. — Session Laws 2007-391, s. 6(f), as amended by Session Laws 2008-187, s. 33(b), provides in part: "Subsections 6(b) through 6(e) of this section become effective January 1, 2008."

§ 163-132.5G. Voting data maintained by voting tabulation district.

Each county board of elections shall maintain voting data by voting tabulation district as provided in G.S. 163-132.1B so that voting tabulation district returns for each item on the ballot shall include the votes cast by all residents of the voting tabulation district who voted, regardless of where they voted. The county board shall not be required to report returns by voting tabulation district for voters who voted other than at their precinct voting place on election day until 60 days after the election. In reporting returns, the county board shall not compromise the secrecy of an individual's ballot. The 60-day deadline for reporting returns by voting tabulation district does not relieve the county board of the duty to report all returns as soon as practicable after the election according to other categories specified by the State Board of Elections. The State Board of Elections shall adopt rules for the enforcement of this section. (2001-466, s. 2; 2003-183, s. 1; 2005-323, s. 1(e); 2007-391, s. 6(c); 2008-187, s. 33(b).)

Editor's Note. —
Session Laws 2007-391, s. 6(f), as amended by Session Laws 2008-187. s. 33(b), provides in part: "Subsections 6(b) through 6(e) of this section become effective January 1, 2008."

Article 14A.

Voting.

Part 1. Definitions.

§ 163-165. Definitions.

In addition to the definitions stated below, the definitions set forth in Article 15A of Chapter 163 of the General Statutes also apply to this Article. As used in this Article:

(1) "Ballot" means an instrument on which a voter indicates a choice so that it may be recorded as a vote for or against a certain candidate or referendum proposal. The term "ballot " may include a paper ballot to be counted by hand, a paper ballot to be counted on an electronic scanner, the face of a lever voting machine, the image on a direct record electronic unit, or a ballot used on any other voting system.

(2) "Ballot item" means a single item on a ballot in which the voters are to choose between or among the candidates or proposals listed.

(3) "Ballot style" means the version of a ballot within a jurisdiction that an individual voter is eligible to vote. For example, in a county that uses essentially the same official ballot, a group office such as county commissioner may be divided into districts so that different voters in the same county vote for commissioner in different districts. The different versions of the county's official ballot containing only those district ballot items one individual voter may vote are the county's different ballot styles.

(4) "Election" means the event in which voters cast votes in ballot items concerning proposals or candidates for office in this State or the United States. The term includes primaries, general elections, referenda, and special elections.

(5) "Official ballot" means a ballot that has been certified by the State Board of Elections and produced by or with the approval of the county board of elections. The term does not include a sample ballot or a specimen ballot.

(6) "Provisional official ballot" means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote. Except for its envelope, a provisional official ballot shall not be marked to make it identifiable to the voter.

(7) "Referendum" means the event in which voters cast votes for or against ballot questions other than the election of candidates to office.

(8) "Voting booth" means the private space in which a voter is to mark an official ballot.

(9) "Voting enclosure" means the room within the voting place that is used for voting.

(10) "Voting place" means the building or area of the building that contains the voting enclosure.

(11) "Voting system" means a system of casting and tabulating ballots. The term includes systems of paper ballots counted by hand as well as systems utilizing mechanical and electronic voting equipment. (2001-460, s. 3; 2001-466, s. 3(a), (b); 2002-159, s. 21(h); 2006-262, s. 4.)

Editor's Note. —

The section is set out above to correct an error appearing in the main volume. In subdivision (10) in the main volume, the phrase "or area of the building" was inadvertently omitted.

Part 2. Ballots and Voting Systems.

§ 163-165.3. Responsibilities for preparing official ballots.

(a) State Board Responsibilities. — The State Board of Elections shall certify the official ballots and voter instructions to be used in every election that is subject to this Article. In conducting its certification, the State Board shall adhere to the following:

(1) No later than January 31 of every calendar year, the State Board shall establish a schedule for the certification of all official ballots and instructions during that year. The schedule shall include a time for county boards of elections to submit their official ballots and instructions to the State Board for certification and times for the State Board to complete the certification.

(2) The State Board of Elections shall compose model ballot instructions, which county boards of elections may amend subject to approval by the State Board as part of the certification process. The State Board of Elections may permit a county board of elections to place instructions elsewhere than on the official ballot itself, where placing them on the official ballot would be impractical.

(3) With regard only to multicounty ballot items on the official ballot, the State Board shall certify the accuracy of the content on the official ballot.

(4) With regard to the entire official ballot, the State Board shall certify that the content and arrangement of the official ballot are in substantial compliance with the provisions of this Article and standards adopted by the State Board.

(5) The State Board shall proofread the official ballot of every county, if practical, prior to final production.

(6) The State Board is not required to certify or review every official ballot style in the county but may require county boards to submit and may review a composite official ballot showing races that will appear in every district in the county.

The State Board shall be responsible for all ballot coding and shall contract with a qualified vendor or supervise trained election staff to produce the data necessary for equipment programming.

(b) County Board Responsibilities. — Each county board of elections shall prepare and produce official ballots for all elections in that county. The county board of elections shall submit the format of each official ballot and set of instructions to the State Board of Elections for review and certification in accordance with the schedule established by the State Board. The county board of elections shall follow the directions of the State Board in placing candidates, referenda, and other material on official ballots and in placing instructions.

(c) Late Changes in Ballots. — The State Board shall promulgate rules for late changes in ballots. The rules shall provide for the reprinting, where practical, of official ballots as a result of replacement candidates to fill vacancies in accordance with G.S. 163-114 or other late changes. If an official ballot is not reprinted, a vote for a candidate who has been replaced in accordance with G.S. 163-114 will count for the replacement candidate.

(d) Special Ballots. — The State Board of Elections, with the approval of a county board of elections, may produce special official ballots, such as those for disabled voters, where production by the State Board would be more practical than production by the county board. (2001-460, s. 3; 2007-391, s. 24(a); 2008-187, s. 33(a).)

Editor's Note. —

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 24(a) is effective August 19, 2007.

Effect of Amendments. — Session Laws 2007-391, s. 24(a), effective August 19, 2007, in subsection (a), substituted "Responsibilities" for "to Certify Official Ballots and Instructions to Voters" in the catchline and added the last paragraph; and substituted "Responsibilities" for "to Prepare and Produce Official Ballots and Instructions" in the subsection (b) catchline.

§ 163-165.5. Contents of official ballots.

Each official ballot shall contain all the following elements:

(1) The heading prescribed by the State Board of Elections. The heading shall include the term "Official Ballot".

(2) The title of each office to be voted on and the number of seats to be filled in each ballot item.

(3) The names of the candidates as they appear on their notice of candidacy filed pursuant to G.S. 163-106 or G.S. 163-323, or on petition forms filed in accordance with G.S. 163-122. No title, appendage, or appellation indicating rank, status, or position shall be printed on the official ballot in connection with the candidate's name. Candidates, however, may use the title Mr., Mrs., Miss, or Ms. Nicknames shall be permitted on an official ballot if used in the notice of candidacy or qualifying petition, but the nickname shall appear according to standards adopted by the State Board of Elections. Those standards shall allow the presentation of legitimate nicknames in ways that do not mislead the voter or unduly advertise the candidacy. In the case of candidates for presidential elector, the official ballot shall not contain the names of the candidates for elector but instead shall contain the nominees for President and Vice President which the candidates for elector represent. The State Board of Elections shall establish a review procedure that local boards of elections shall follow to ensure that candidates' names appear on the official ballot in accordance with this subdivision.

(4) Party designations in partisan ballot items.

(5) A means by which the voter may cast write-in votes, as provided in G.S. 163-123. No space for write-ins is required unless a write-in candidate has qualified under G.S. 163-123 or unless the ballot item is exempt from G.S. 163-123.

(6) Instructions to voters, unless the State Board of Elections allows instructions to be placed elsewhere than on the official ballot.

(7) The printed title and facsimile signature of the chair of the county board of elections. (2001-460, s. 3; 2003-209, s. 1; 2007-391, s. 10; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 10 is effective August 19, 2007.

Effect of Amendments. — Session Laws 2007-391, s. 10, effective August 19, 2007, added the last sentence in subdivision (5).

§ 163-165.5B. Ballots may be combined.

Notwithstanding any other statute or local act, a county board of elections, with the approval of the State Board of Elections, may combine ballot items on the same official ballot. (2007-391, s. 7; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the act. Session Laws 2007-391, s. 39 made this section effective August 19, 2007.

§ 163-165.7. Voting systems: powers and duties of State Board of Elections.

(a) Only voting systems that have been certified by the State Board of Elections in accordance with the procedures and subject to the standards set forth in this section and that have not been subsequently decertified shall be permitted for use in elections in this State. Those certified voting systems shall be valid in any election held in the State or in any county, municipality, or other electoral district in the State. Subject to all other applicable rules adopted by the State Board of Elections and, with respect to federal elections, subject to all applicable federal regulations governing voting systems, paper ballots marked by the voter and counted by hand shall be deemed a certified voting system. The State Board of Elections shall certify optical scan voting systems, optical scan with ballot markers voting systems, and direct record electronic voting systems if any of those systems meet all applicable requirements of federal and State law. The State Board may certify additional voting systems only if they meet the requirements of the request for proposal process set forth in this section and only if they generate either a paper ballot or a paper record by which voters may verify their votes before casting them and which provides a backup means of counting the vote that the voter casts. Those voting systems may include optical scan and direct record electronic (DRE) voting systems. In consultation with the Office of Information Technology Services, the State Board shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. Among other requirements, the request for proposal shall require at least all of the following elements:

(1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the voting system. Damages shall include, among other items, any costs of conducting a new election attributable to those defects.

(2) That the voting system comply with all federal requirements for voting systems.

(3) That the voting system must have the capacity to include in voting tabulation district returns the votes cast by voters outside of the voter's voting tabulation district as required by G.S. 163-132.5G.

(4) With respect to electronic voting systems, that the voting system generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye recount, or other audit. Electronic systems that employ optical scan technology to count paper ballots shall be deemed to satisfy this requirement.

(5) With respect to DRE voting systems, that the paper record generated by the system be viewable by the voter before the vote is cast electronically, and that the system permit the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast.

(6) With respect to all voting systems using electronic means, that the vendor provide access to all of any information required to be placed in escrow by a vendor pursuant to G.S. 163-165.9A for review and examination by the State Board of Elections; the Office of Information Technology Services; the State chairs of each political party recog-

nized under G.S. 163-96; the purchasing county; and designees as provided in subdivision (9) of subsection (d) of this section.

(7) That the vendor must quote a statewide uniform price for each unit of the equipment.

(8) That the vendor must separately agree with the purchasing county that if it is granted a contract to provide software for an electronic voting system but fails to debug, modify, repair, or update the software as agreed or in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163-165.9A(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163-165.9A(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in subdivision (6) of this subsection for the purpose of reviewing the source code.

In its request for proposal, the State Board of Elections shall address the mandatory terms of the contract for the purchase of the voting system and the maintenance and training related to that voting system.

If a voting system was acquired or upgraded by a county before August 1, 2005, the county shall not be required to go through the purchasing process described in this subsection if the county can demonstrate to the State Board of Elections compliance with the requirements in subdivisions (1) through (6) and subdivision (8) of this subsection, where those requirements are applicable to the type of voting system involved. If the county cannot demonstrate to the State Board of Elections that the voting system is in compliance with those subdivisions, the county board shall not use the system in an election during or after 2006, and the county shall be subject to the purchasing requirements of this subsection.

(a1) Federal Assistance. — The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002.

(b) The State Board may also, upon notice and hearing, decertify types, makes, and models of voting systems. Upon decertifying a type, make, or model of voting system, the State Board shall determine the process by which the decertified system is discontinued in any county. A county may appeal a decision by the State Board concerning the process by which the decertified system is discontinued in that county to the Superior Court of Wake County. The county has 30 days from the time it receives notice of the State Board's decision on the process by which the decertified system is discontinued in that county to make that appeal.

(c) Prior to certifying a voting system, the State Board of Elections shall review, or designate an independent expert to review, all source code made available by the vendor pursuant to this section and certify only those voting systems compliant with State and federal law. At a minimum, the State Board's review shall include a review of security, application vulnerability, application code, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness, as applicable to that voting system. Any portion of the report containing specific information related to any trade secret as designated pursuant to G.S. 132-1.2 shall be confidential and shall be accessed only under the rules adopted pursuant to subdivision (9) of subsection (d) of this section. The State Board may hear and discuss the report of any such review under G.S. 143-318.11(a)(1).

(d) Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, including all of the following:

(1) Procedures for county boards of elections to utilize when recommending the purchase of a certified voting system for use in that county.
(2) Form of official ballot labels to be used on voting systems.
(3) Operation and manner of voting on voting systems.
(4) Instruction of precinct officials in the use of voting systems.
(5) Instruction of voters in the use of voting systems.
(6) Assistance to voters using voting systems.
(7) Duties of custodians of voting systems.
(8) Examination and testing of voting systems in a public forum in the county before and after use in an election.
(9) Notwithstanding G.S. 132-1.2, procedures for the review and examination of any information placed in escrow by a vendor pursuant to G.S. 163-165.9A by only the following persons:
    a. State Board of Elections.
    b. Office of Information Technology Services.
    c. The State chairs of each political party recognized under G.S. 163-96.
    d. The purchasing county.

    Each person listed in sub-subdivisions a. through d. of this subdivision may designate up to three persons as that person's agents to review and examine the information. No person shall designate under this subdivision a business competitor of the vendor whose proprietary information is being reviewed and examined. For purposes of this review and examination, any designees under this subdivision and the State party chairs shall be treated as public officials under G.S. 132-2.
(10) With respect to electronic voting systems, procedures to maintain the integrity of both the electronic vote count and the paper record. Those procedures shall at a minimum include procedures to protect against the alteration of the paper record after a machine vote has been recorded and procedures to prevent removal by the voter from the voting enclosure of any paper record or copy of an individually voted ballot or of any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper record.
(11) Compliance with section 301 of the Help America Vote Act of 2002.

Any rules adopted under this subsection shall be in conjunction with procedures and standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General Statutes, and are subject to the same procedures for notice and publication set forth in G.S. 163-182.1.

(e) The State Board of Elections shall facilitate training and support of the voting systems utilized by the counties. (2001-460, s. 3; 2003-226, s. 11; 2005-323, s. 1(a)-(d); 2006-264, s. 76(a); 2007-391, s. 6(d); 2008-187, s. 33(b).)

Editor's Note. —

Session Laws 2007-391, s. 6(f), as amended by Session Laws 2008-187, s. 33(b), provides in part: "Subsections 6(b) through 6(e) of this section become effective January 1, 2008."

Session Laws 2008-150, s. 3, provides: "The State Board of Elections is authorized to select elections for offices of local government in which to use instant runoff voting in up to 10 local jurisdictions in each of the following years: 2009, 2010, and 2011. The selection of jurisdictions and administration of instant runoff voting shall follow the provisions of Section 1(a) of Session Law 2006-192, except that the local governing board that is the subject of the election must approve participation in the pilot and also must agree to cooperate with the county board of elections and the Board in the development and implementation of a plan to educate candidates and voters about how to use the runoff voting method. In a multiseat contest, the Board shall modify the method used for instant runoff voting in single-seat contests to apply its essential principles suitably to that election. In the case of a board of education election where the 'local governing board' must be asked to authorize instant runoff voting because nonpartisan plurality elections are normally used, the 'local governing board' is the board of education itself. If instant runoff voting is used in place of the nonpartisan election and runoff method as described in G.S. 163-293, the county board of elections, with the approval of the local governing board, may hold the election on the first Tuesday after the first Monday in November. The State Board of Elections, in consultation with the School of Government at the University of North Carolina, shall by January 1, 2009, develop for the pilot program authorized in this section goals, standards consistent with general election law, and criteria for implementation and evaluation. The pilot program shall be conducted according to those goals, standards, and criteria."

§ 163-165.9. Voting systems: powers and duties of county board of elections.

(a) Before approving the adoption and acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

(1) Recommend to the board of county commissioners which type of voting system should be acquired by the county.

(2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the type of voting system to be recommended and also witness a demonstration of at least one other type of voting system certified by the State Board of Elections.

(3) Test, during an election, the proposed voting system in at least one precinct in the county where the voting system would be used if adopted.

(b) After the acquisition of any voting system, the county board of elections shall comply with any requirements of the State Board of Elections regarding training and support of the voting system by completing all of the following:

(1) The county board of elections shall comply with all specifications of its voting system vendor for ballot printers. The county board of elections is authorized to contract with noncertified ballot printing vendors, so long as the noncertified ballot printing vendor meets all specifications and all quality assurance requirements as set by the State Board of Elections.

(2) The county board of elections shall maintain software license and maintenance agreements necessary to maintain the warranty of its voting system. (2001-460, s. 3; 2005-323, s. 4; 2007-391, s. 25; 2008-187, s. 33(a).)

Editor's Note. —

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 25, is effective August 19, 2007.

Effect of Amendments. — Session Laws 2007-391, s. 25, August 19, 2007, in subsection (b), added "by completing all of the following" at the end of the introductory paragraph, and added subdivisions (b)(1) and (b)(2).

Part 3. Procedures at the voting place.

§ 163-166.3. Limited access to the voting enclosure.

(a) Persons Who May Enter Voting Enclosure. — During the time allowed for voting in the voting place, only the following persons may enter the voting enclosure:

(1) An election official.
(2) An observer appointed pursuant to G.S. 163-45.
(2a) A runner appointed pursuant to G.S. 163-45, but only to the extent necessary to announce that runner's presence and to receive the voter list as provided in G.S. 163-45.
(3) A person seeking to vote in that voting place on that day but only while in the process of voting or seeking to vote.
(4) A voter in that precinct while entering or explaining a challenge pursuant to G.S. 163-87 or G.S. 163-88.
(5) A person authorized under G.S. 163-166.8 to assist a voter but, except as provided in subdivision (6) of this section, only while assisting that voter.
(6) Minor children of the voter under the age of 18, or minor children under the age of 18 in the care of the voter, but only while accompanying the voter and while under the control of the voter.
(7) Persons conducting or participating in a simulated election within the voting place or voting enclosure, if that simulated election is approved by the county board of elections.
(8) Any other person determined by election officials to have an urgent need to enter the voting enclosure but only to the extent necessary to address that need.

(b) Photographing Voters Prohibited. — No person shall photograph, videotape, or otherwise record the image of any voter within the voting enclosure, except with the permission of both the voter and the chief judge of the precinct. If the voter is a candidate, only the permission of the voter is required. This subsection shall also apply to one-stop sites under G.S. 163-227.2. This subsection does not apply to cameras used as a regular part of the security of the facility that is a voting place or one-stop site.

(c) Photographing Voted Ballot Prohibited. — No person shall photograph, videotape, or otherwise record the image of a voted official ballot for any purpose not otherwise permitted under law. (2001-460, s. 3; 2005-428, s. 1(b); 2007-391, s. 23; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 23, is effective August 19, 2007.

Effect of Amendments. —

Session Laws 2007-391, s. 23, effective August 19, 2007, designated the former section as present subsection (a) and added subsections (b) and (c); in subsection (a), added the subsection catchline.

§ 163-166.4. Limitation on activity in the voting place and in a buffer zone around it.

(a) Buffer Zone and Adjacent Area for Election-Related Activity. — No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place. In determining the dimensions of that buffer zone for each voting place, the county board of elections shall, where practical, set the limit at 50 feet from the door of entrance to the voting place, measured when that door is closed, but in no event shall it set the limit at more than 50 feet or at less than 25 feet. Except as provided in subsection (b), the county board of elections shall also provide an area adjacent to the buffer zone for each voting place in which persons or groups of persons may distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity.

(b) Special Agreements About Election-Related Activity. — The Executive Director of the State Board of Elections may grant special permission for a county board of elections to enter into an agreement with the owners or managers of a nonpublic building to use the building as a voting place on the condition that election-related activity as described in subsection (a) of this section not be permitted on their property adjacent to the buffer zone, if the Executive Director finds all of the following:

(1) That no other suitable voting place can be secured for the precinct.
(2) That the county board will require the chief judge of the precinct to monitor the grounds around the voting place to ensure that the restriction on election-related activity shall apply to all candidates and parties equally.
(3) That the pattern of voting places subject to agreements under this subsection does not disproportionately favor any party, racial or ethnic group, or candidate.

An agreement under this subsection shall be valid for as long as the nonpublic building is used as a voting place.

(c) Notice About Buffer Zone. — No later than 30 days before each election, the county board of elections shall make available to the public the following information concerning each voting place:

(1) The door from which the buffer zone is measured.
(2) The distance the buffer zone extends from that door.
(3) Any available information concerning where political activity, including sign placement, is permitted beyond the buffer zone.

(d) Buffer Zone at One-Stop Sites. — The provisions of this section shall apply to one-stop voting sites in G.S. 163-227.2, except that the notice in subsection (c) of this section shall be provided no later than 10 days before the opening of one-stop voting at the site. (2001-460, s. 3; 2003-365, s. 1; 2007-391, s. 13; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 13, is effective August 19, 2007.

Effect of Amendments. — Session Laws 2007-391, effective August 19, 2007, s. 13, added subsection (d).

§ 163-166.12. Requirements for certain voters who register by mail.

(a) Voting in Person. — An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.
(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. — An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.
(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b1) The county board of elections shall note the type of identification proof submitted by the voter under the provisions of subsection (a) or (b) of this section and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

(b2) Voting When Identification Numbers Do Not Match. — Regardless of whether an individual has registered by mail or by another method, if the individual has provided with the registration form a drivers license number or last four digits of a Social Security number but the computer validation of the number as required by G.S. 163-82.12 did not result in a match, and the number has not been otherwise validated by the board of elections, in the first election in which the individual votes that individual shall submit with the ballot the form of identification described in subsection (a) or subsection (b) of this section, depending upon whether the ballot is voted in person or absentee. If that identification is provided and the board of elections does not determine that the individual is otherwise ineligible to vote a ballot, the failure of identification numbers to match shall not prevent that individual from registering to vote and having that individual's vote counted. If the individual registers and votes under G.S. 163-82.6A, the identification documents required in that section, rather than those described in subsection (a) or (b) of this section, apply.

(c) The Right to Vote Provisionally. — If an individual is required under subsection (a), (b), or (b2) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. — This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:
  a. A copy of a current and valid photo identification.
  b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration. If any individual's number does not match, the individual shall provide identification as required in subsection (b2) of this section in the first election in which the individual votes.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.

(5) An individual who is entitled to vote otherwise than in person under any other federal law. (2003-226, s. 16; 2004-127, s. 3; 2007-391, s. 21(a); 2008-187, s. 33(a).)

Editor's Note. —
Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 21(a), is effective August 19, 2007.

Effect of Amendments. — Session Laws 2007-391, s. 21(a), effective August 19, 2007, added subsection (b2); substituted "(a), (b), or (b2)" for "(a) or (b)" in subsection (c); and added the last sentence in (d)(2).

Article 15A.

Counting Official Ballots, Canvassing Votes, Hearing Protests, and Certifying Results.

§ 163-182.12. Authority of State Board of Elections over protests.

The State Board of Elections may consider protests that were not filed in compliance with G.S. 163-182.9, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over protests pending before a county board, and may take any other action necessary to assure that an election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election. Where a known group of voters cast votes that were lost beyond retrieval or where a known group of voters was given an incorrect ballot style, the State Board of Elections may authorize a county board of elections to allow those voters to recast their votes during a period of two weeks after the canvass by the State Board of Elections required in G.S. 163-182.5(c). If there is no State Board canvass after the election, the State Board may authorize the county board to allow the recasting of votes during the two weeks after the county canvass set in G.S. 163-182.5(a). If the State Board approves a recasting of votes under this section, any procedures the county board uses to contact those voters and allow them to recast their votes shall be subject to approval by the State Board. Those recast votes shall be added to the returns and included in the canvass. The recasting of those votes shall not be deemed a new election for purposes of G.S. 163-182.13. (2001-398, s. 3; 2005-428, s. 17; 2007-391, s. 12; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 12, is effective August 19, 2007.

§ 163-182.13. New elections.

(a) When State Board May Order New Election. — The State Board of Elections may order a new election, upon agreement of at least four of its members, in the case of any one or more of the following:

(1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.

(2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.

(3) Other irregularities affected a sufficient number of votes to change the outcome of the election.

(4) Irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness.

(b) State Board to Set Procedures. — The State Board of Elections shall determine when a new election shall be held and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election.

(c) Eligibility to Vote in New Election. — Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election, except that in a primary, no person who voted in the initial primary of one party shall vote in the new election in the primary of another party. The

State Board of Elections shall promulgate rules to effect the provisions of this subsection.

(d) Jurisdiction in Which New Election Held. — The new election shall be held in the entire jurisdiction in which the original election was held.

(e) Which Candidates to Be on Official Ballot. — All the candidates who were listed on the official ballot in the original election shall be listed in the same order on the official ballot for the new election, except in either of the following:

(1) If a candidate dies or otherwise becomes ineligible between the time of the original election and the new election, that candidate may be replaced in the same manner as if the vacancy occurred before the original election.

(2) If the election is for a multiseat office, and the irregularities could not have affected the election of one or more of the candidates, the new election, upon agreement of at least four members of the State Board, may be held among only those candidates whose election could have been affected by the irregularities.

(f) Tie Votes. — If ineligible voters voted in an election and it is possible to determine from the official ballots the way in which those votes were cast and to correct the results, and consequently the election ends in a tie, the provisions of G.S. 163-182.8 concerning tie votes shall apply. (2001-398, s. 3; 2003-278, s. 8(a); 2008-150, s. 2(a).)

Effect of Amendments. — Session Laws 2008-150, s. 2(a), effective August 2, 2008, in subdivision (e)(2), substituted "one or more of the candidates" for "one or more of the leading vote getters" and deleted "remaining" preceding "candidates whose election."

CASE NOTES

Authorization to Order New Election. — Pursuant to the provisions of G.S. 163-182.13(a), because the removal of eighteen unqualified votes and the addition of two qualified votes could have changed the outcome of an election for town council members, the North Carolina State Board of Elections was authorized to order a new election. In re Atchison, — N.C. App. —, — S.E.2d —, 2008 N.C. App. LEXIS 1467 (Aug. 5, 2008).

All Candidates to be Listed On Ballot for New Election. — Trial court did not err, under G.S. 163-182.13(e), by requiring that all the candidates who were listed on the official ballot in an original election for town council positions were to be listed in the same order on the official ballot for a new election because there were no leading vote getters who could not have been affected by a voting irregularity. In re Atchison, — N.C. App. —, — S.E.2d —, 2008 N.C. App. LEXIS 1467 (Aug. 5, 2008).

§ 163-182.14. Appeal of a final decision to superior court; appeal to the General Assembly or a house thereof.

(a) Final Decision. — A copy of the final decision of the State Board of Elections on an election protest shall be served on the parties personally or through delivery by U.S. mail or a designated delivery service authorized under 26 U.S.C. § 7502(f)(2) if that delivery provides a record of the date and time of delivery to the address provided by the party. A decision to order a new election is considered a final decision for purposes of seeking review of the decision.

(b) Timing of Right of Appeal. — Except in the case of a general or special election to either house of the General Assembly or to an office established by Article III of the Constitution, an aggrieved party has the right to appeal the final decision to the Superior Court of Wake County within 10 days of the date of service.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service. The court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, and that the petitioner is likely to prevail in the appeal.

If service is by mail or a designated delivery service, the additional time after service provided in Rule 6(e) of the North Carolina Rules of Civil Procedure shall apply to both the time for appeal and the time to obtain a stay under this subsection.

(c) Contests for General Assembly and Executive Branch Offices. — In the case of a general or special election to either house of the General Assembly or to an office established by Article III of the Constitution, an unsuccessful candidate has the right to appeal the final decision to the General Assembly in accordance with Article 3 of Chapter 120 and G.S. 163-182.13A, as appropriate.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election shall issue pursuant to G.S. 163-182.15 unless a contest of the election is initiated pursuant to Article 3 of Chapter 120 or G.S. 163-182.13A, as appropriate. (2001-398, s. 3; 2003-278, s. 8(b); 2005-3, s. 4; 2008-150, s. 4(a).)

Effect of Amendments. — Session Laws 2008-150, s. 4(a), effective October 1, 2008, in subsection (a), substituted "personally or through delivery by U.S. mail or a designated delivery service authorized under 26 U.S.C. § 7502(f)(2) if that delivery provides a record of the date and time of delivery to the address provided by the party" for "personally or by certified mail"; and in subsection (b), added the third paragraph.

§ 163-182.15. Certificate of nomination or election, or certificate of the results of a referendum.

(a) Issued by County Board of Elections. — In ballot items within the jurisdiction of the county board of elections, the county board shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the county board six days after the completion of the canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

(1) The certificate shall be issued five days after the protest is dismissed or denied by the county board of elections, unless that decision has been appealed to the State Board of Elections.

(2) The certificate shall be issued on the tenth day after the final decision of the State Board, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Superior Court of Wake County pursuant to G.S. 163-182.14.

(3) If the decision of the State Board has been appealed to the Superior Court of Wake County and the court has stayed the certification, the certificate shall be issued five days after the entry of a final order in the case in the Superior Court of Wake County, unless that court or an appellate court orders otherwise.

(4) No certificate of election need be issued for any member of the General Assembly following a contest of the election pursuant to Article 3 of Chapter 120.

(b) Issued by State Board of Elections. — In ballot items within the jurisdiction of the State Board of Elections, the State Board of Elections shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the State Board six days after the completion of the canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

(1) The certificate shall be issued 10 days after the final decision of the State Board on the election protest, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Superior Court of Wake County pursuant to G.S. 163-182.14.

(2) If the decision of the State Board has been appealed to the Superior Court of Wake County and the court has stayed the certification, the certificate shall be issued five days after the entry of a final order in the case in the Superior Court of Wake County, unless that court or an appellate court orders otherwise.

(3) The certificate shall be issued immediately upon the filing of a copy of the determination of the General Assembly with the State Board of Elections in contested elections involving any elective office established by Article III of the Constitution.

(4) No certificate of election need be issued for any member of the General Assembly following a contest of the election pursuant to Article 3 of Chapter 120.

(c) Copy to Secretary of State. — The State Board of Elections shall provide to the Secretary of State a copy of each certificate of nomination or election, or certificate of the results of a referendum, issued by it. The Secretary shall keep the certificates in a form readily accessible and useful to the public.

(d) Determining Results. — In a primary for party nomination, the results shall be determined in accordance with G.S. 163-111. In a general election, the individuals having the highest number of votes for each office shall be declared elected to the office, and the certificate shall be issued accordingly. In a referendum, the ballot proposal receiving the highest number of votes shall be declared to have prevailed, and the certificate shall be issued accordingly. (2001-398, s. 3; 2003-278, s. 10(k); 2005-3, s. 5; 2005-428, s. 13; 2007-391, s. 11; 2007-484, s. 22; 2008-187, s. 33(a).)

Editor's Note. —
Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 11, is effective August 19, 2007.

Effect of Amendments. — Session Laws 2007-391, s. 11, effective August 19, 2007, substituted "on the tenth day" for "10 days" in subdivision (a)(2).

ARTICLE 18A.

Presidential Preference Primary Act.

§ 163-213.4. Nomination by State Board of Elections.

By the first Tuesday in February of the year preceding the North Carolina presidential preference primary, the chair of each political party shall submit to the State Board of Elections a list of its presidential candidates to be placed on the presidential preference primary ballot. The list must be comprised of candidates whose candidacy is generally advocated and recognized in the news media throughout the United States or in North Carolina, unless any such candidate executes and files with the chair of the political party an affidavit stating without qualification that the candidate is not and does not intend to become a candidate for nomination in the North Carolina Presidential Preference Primary Election. The State Board of Elections shall prepare and publish a list of the names of the presidential candidates submitted. The State Board of Elections shall convene in Raleigh on the first Tuesday in March preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have been submitted to the State Board of Elections. Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with. (1971, c. 225; 1975, c. 744; 1983, c. 729; 1987, c. 81, s. 1; c. 549, s. 6.1; 1991, c. 689, s. 15(c); 2003-278, s. 9(a); 2007-391, s. 33; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 33, is effective August 19, 2007.

Effect of Amendments. — Session Laws 2007-391, s. 33, effective August 19, 2007, added the first three sentences; and rewrote the second-to-last sentence.

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

Article 22.

Corrupt Practices and Other Offenses Against the Elective Franchise.

§ 163-274. Certain acts declared misdemeanors.

CASE NOTES

Cited in Craven v. Cope, — N.C. App. —, 656 S.E.2d 729, 2008 N.C. App. LEXIS 266 (2008).

Article 22A.

Regulating Contributions and Expenditures in Political Campaigns.

Part 1. In General.

§ 163-278.6. Definitions.

When used in this Article:

(1) The term "board" means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county or municipal board of elections with respect to all candidates for county and municipal offices. The term means the State Board of

Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station. Special definitions of "radio" and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(3) The term "business entity" means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, has otherwise qualified as a candidate in a manner authorized by law, or has received funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the purpose of exploring or bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of "candidate" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of "print media," "radio," and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term "contribution" does not include an "independent expenditure." If:

a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the

Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3); and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee

that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party.

(7) The term "corporation" means any corporation established under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer. The term applies regardless of whether the corporation does business in the State of North Carolina.

(7a) The term "costs of collection" means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures.

(7b) The term "day" means calendar day.

(7c) The term "election cycle" means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, "election cycle" means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(8) The term "election" means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include any local or statewide referendum.

(8a) The term "enforcement costs" means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty.

(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee.

(9a) The term "independently expend" or "independent expenditure" means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term "independent expenditure" applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes.

(10) The term "individual" means a single individual or more than one individual.

(11) The term "insurance company" means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.

(12) The term "labor union" means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers, or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.

(13) The term "person" means any business entity, corporation, insurance company, labor union, or professional association.

(14) The term "political committee" means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has the major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

The term "political committee" includes the campaign of a candidate who serves as his or her own treasurer.

Special definitions of "political action committee" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under

the provisions of G.S. 163-96. A special definition of "political party organization" that applies only in Part 1A of this Article is set forth in G.S. 163-278.38Z.

(16) Repealed by Session Laws 1999-31, s. 4.

(17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.

(18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan.

(18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term "referendum" includes any type of municipal, county, or special district referendum and any initiative or referendum authorized by a municipal charter or local act. A recall election shall not be considered a referendum within the meaning of this Article.

(18b) The term "referendum committee" means a combination of two or more individuals such as a committee, association, organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary purpose of which is to support or oppose the passage of any referendum on the ballot. If the entity qualifies as a "referendum committee" under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

(19) The term "treasurer" means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163-278.7 or G.S. 163-278.40A. (1973, c. 1272, s. 1; 1975, c. 798, ss. 5, 6; 1979, c. 500, s. 1; c. 1073, ss. 1-3, 19, 20; 1981, c. 837, s. 1; 1983, c. 331, s. 6; 1985, c. 352, ss. 1-3; 1997-515, ss. 4(a)-(c), 7(b)-(d); 1999-31, ss. 1(a), (b), 2(a)-(c), 3, 4(a); 1999-424, s. 6(a), (b); 2002-159, s. 55(n); 2003-278, s. 5; 2004-125, s. 3; 2004-127, s. 15; 2004-203, s. 12(b); 2005-430, s. 10; 2006-264, s. 23; 2007-391, s. 3; 2008-150, s. 6(a); 2008-187, s. 33(a).)

Editor's Note. —

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 3, is effective August 19, 2007.

Session Laws 2008-97, s. 1, repealed section 2-7 of the Charter of the Town of Carrboro, S.L. 1987, c. 476, as added by S.L. 1993, c. 660, s. 2, which was a local modification for G.S. 163-278.6 and 163-278.40.

Effect of Amendments. —

Session Laws 2007-391, s. 3, effective August 19, 2007, deleted the former second paragraph under subdivision (14)d.

Session Laws 2008-150, s. 6(a), effective August 2, 2008, in subdivision (14), added the fourth paragraph; and in sub-subdivision (14)d, substituted "Has the major purpose" for "Has as a major purpose" at the beginning.

CASE NOTES

Constitutionality. —
G.S. 163-278.6(14) expands the definition of political committee beyond the constitutional limits of the First Amendment by imposing a political committee designation and its associated burdens on entities when influencing elections is only a major purpose, instead of the major purpose, of an organization. G.S. 163-278.6(14) magnifies its overbreadth by providing insufficient direction to speakers and leaving regulators free to operate without even the guidance of discernible, neutral criteria; furthermore, narrower means exist for North Carolina to achieve its regulatory goals. N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 2008 U.S. App. LEXIS 9426 (4th Cir. 2008).

Independent Expenditures. — Because the application of a $4,000 contribution limit to political committees that make independent expenditures, as defined in G.S. 163-278.6(9a), does not further the state's interest in preventing corruption, G.S. 163-278.13 violates the First Amendment insofar as G.S. 163-278.13 is applied to independent expenditure political committees. N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 2008 U.S. App. LEXIS 9426 (4th Cir. 2008).

§ 163-278.8. Detailed accounts to be kept by political treasurers.

(a) The treasurer of each candidate, political committee, and referendum committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or referendum committee. The accounts shall include the information required by the State Board of Elections on its forms.

(b) Accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) Repealed by Session Laws 2004-125, s. 5(a), effective July 20, 2004, and applicable to contributions made on or after January 1, 2003.

(d) Repealed by Session Laws 2006-195, s. 4, effective January 1, 2007, and applicable to all contributions made and accepted on or after that date.

(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and separately with specific descriptions to provide a reasonable understanding of the expenditure.

(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a non media expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual.

(g) All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(h) The treasurer shall maintain all moneys of the political committee in a bank account or bank accounts used exclusively by the political committee and shall not commingle those funds with any other moneys. (1973, c. 1272, s. 1; 1977, c. 635, s. 1; 1979, c. 1073, ss. 16, 20; 1981, c. 814, s. 1; 1985, c. 353, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 744, s. 1; 1999-424, s. 7(m); 2004-125, s. 5(a); 2005-430, ss. 2, 3; 2006-161, ss. 2, 3; 2006-195, s. 4; 2008-150, s. 10(a).)

Effect of Amendments. —
Session Laws 2008-150, s. 10(a), effective September 1, 2008, added subsection (h).

§ 163-278.8A. (For effective date and applicability, see Editor's note) Campaign sales by political party executive committees.

(a) Exempt Purchase Price Not Treated as "Contribution." — Notwithstanding the provisions of G.S. 163-278.6(6), the purchase price of goods or services sold by a political party executive committee as provided in subsection (b) of this section shall not be treated as a "contribution" for purposes of account-keeping under G.S. 163-278.8, for purposes of the reporting of contributions under G.S. 163-278.11, or for the purpose of the limit on contributions under G.S. 163-278.13. The treasurer is not required to obtain, maintain, or report the name or other identifying information of the purchaser of the goods or services, as long as the requirements of subsection (b) of this section are satisfied. However, the proceeds from the sales of those goods and services shall be treated as contributions for other purposes, and expenditures of those proceeds shall be reported as expenditures under this Article.

(b) Exempt Purchase Price. — A purchase price for goods or services sold by a political party executive committee qualifies for the exemption provided in subsection (a) of this section as long as the sale of the goods or services adheres to a plan that the treasurer has submitted to and that has been approved in writing by the Executive Director of the State Board of Elections. The Executive Director shall approve the treasurer's plan upon and only upon finding that all the following requirements are satisfied:

(1) That the price to be charged for the goods or services is reasonably close to the market price for the goods or services.
(2) That the total amount to be raised from sales under all plans by the committee does not exceed ten thousand dollars ($10,000) per election cycle.
(3) That no purchaser makes total purchases under the plan that exceed fifty dollars ($50.00).
(4) That the treasurer include in the report under G.S. 163-278.11, covering the relevant time period, all of the following:
    a. A description of the plan.
    b. The amount raised from sales under the plan.
    c. The number of purchases made.
(5) That the treasurer shall include in the appropriate report under G.S. 163-278.11 any in-kind contribution made to the political party executive committee in providing the goods or services sold under the plan and that no in-kind contribution accepted as part of the plan violates any provision of this Article.

The Executive Director may require a format for submission of a plan, but that format shall not place undue paperwork burdens upon the treasurer. As used in this subdivision, the term "election cycle" has the same meaning as in G.S. 163-278.6(7c). (2008-150, s. 8(a).)

Editor's Note. — Section Laws 2008-150, s. 8(b), provides: "This section becomes effective August 15, 2008, or on the date of preclearance under Section 5 of the Voting Rights Act of 1965, whichever occurs later, except that with respect to county political party executive committees in counties not subject to Section 5 of the Voting Rights Act it is effective when it becomes law [August 15, 2008]. This section applies to contributions made or accepted on or after the effective date. If preclearance is denied to this section, this section is repealed on the date of denial." Preclearance from the U.S. Department of Justice was received by letter dated October 6, 2008.

§ 163-278.9. Statements filed with Board.

(a) Except as provided in G.S. 163-278.10A, the treasurer of each candidate and of each political committee shall file with the Board under certification of the treasurer as true and correct to the best of the knowledge of that officer the following reports:

(1) Organizational Report. — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

(2) Repealed by Session Laws 1999-31, s. 7(a), effective January 1, 2000.

(3) Postprimary Report(s). — Repealed by Session Laws 1997-515, s. 1.

(4) Preelection Report. — Repealed by Session Laws 1997-515, s. 1.

(4a) 48-Hour Report. — A political committee or political party that receives a contribution or transfer of funds shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received before an election but after the period covered by the last report due before that election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of the funds. The State Board of Elections shall specify the form and manner of making the report, including the reporting of in-kind contributions.

(5) Repealed by Session Laws 1985, c. 164, s. 1.

(5a) Quarterly Reports. — During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting or opposing a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that:

a. The report for the first quarter shall also cover the period in April through the seventeenth day before the primary, the first quarter report shall be due seven days after that date, and the second quarter report shall not include that period if a first quarter report was required to be filed; and

b. The report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) Semiannual Reports. — If contributions are received or expenditures made for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in July, covering the period through the last day of June, and shall be reported by the last Friday in January, covering the period through the last day of December.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported.

(c) Repealed by Session Laws 1985, c. 164, s. 6.1.

(d) Candidates and committees for municipal offices are not subject to subsections (a), (b) and (c) of this section, unless they make contributions or expenditures concerning elections covered by this Part. Reports for those candidates and committees are covered by Part 2 of this Article.

(e) Notwithstanding subsections (a) through (c) of this section, any political party (including a State, district, county, or precinct committee thereof) which is required to file reports under those subsections and under the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 434), shall instead of filing the reports required by those subsections, file with the State Board of Elections:

(1) The organizational report required by subsection (a)(1) of this section, and

(2) A copy of each report required to be filed under 2 U.S.C. 434, such copy to be filed on the same day as the federal report is required to be filed.

(f) Any report filed under subsection (e) of this section may include matter required by the federal law but not required by this Article.

(g) Any report filed under subsection (e) of this section must contain all the information required by G.S. 163-278.11, notwithstanding that the federal law may set a higher reporting threshold.

(h) Any report filed under subsection (e) of this section may reflect the cumulative totals required by G.S. 163-278.11 in an attachment, if the federal law does not permit such information in the body of the report.

(i) Any report or attachment filed under subsection (e) of this section must be certified.

(j) Treasurers for the following entities shall electronically file each report required by this section that shows a cumulative total for the election cycle in excess of five thousand dollars ($5,000) in contributions, in expenditures, or in loans, according to rules adopted by the State Board of Elections:

(1) A candidate for statewide office;

(2) A State, district, county, or precinct executive committee of a political party, if the committee makes contributions or independent expenditures in excess of five thousand dollars ($5,000) that affect contests for statewide office;

(3) A political committee that makes contributions in excess of five thousand dollars ($5,000) to candidates for statewide office or makes independent expenditures in excess of five thousand dollars ($5,000) that affect contests for statewide office.

The State Board of Elections shall provide the software necessary to file an electronic report to a treasurer required to file an electronic report at no cost to the treasurer.

(k) All reports under this section must be filed by a treasurer or assistant treasurer who has completed all training as to the duties of the office required by G.S. 163-278.7(f). (1973, c. 1272, s. 1; 1975, c. 565, s. 1; 1979, c. 500, ss. 3,

16; c. 730; 1981, c. 837, s. 2; 1985, c. 164, ss. 1, 6-6.2; 1987 (Reg. Sess., 1988), c. 1028, s. 6; 1991 (Reg. Sess., 1992), c. 1032, s. 10A; 1997-515, ss. 1(a), 4(d1), 5(a), 12(a); 1999-31, s. 7(a), (b); 2001-235, s. 2; 2001-419, s. 7; 2001-487, s. 97(b); 2002-159, s. 21(d); 2006-195, ss. 5.1, 8; 2008-150, ss. 9(c), (d), 11(a).)

Effect of Amendments. —
Session Laws 2008-150, s. 9(c) and (d), effective December 1, 2008, in the introductory language of subdivision (a)(5a), inserted "or opposing"; and in subsection (d), added "unless they make contributions or expenditures concerning elections covered by this Part" to the end of the first sentence.

Session Laws 2008-150, s. 11(a), effective October 1, 2008, in subdivision (a)(4a), deleted "from any political committee" following "transfer of funds" in the first sentence, and added "including the reporting of in-kind contributions" to the end of the last sentence.

§ 163-278.9A. Statements filed by referendum committees.

(a) The treasurer of each referendum committee shall file under verification with the Board the following reports:

(1) Organizational Report. — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures shall be filed with the Board no later than the tenth day following the organization of the referendum committee.

(2) Pre-Referendum Report. — The treasurer shall file a report with the Board no later than the tenth day preceding the referendum.

(2a) 48-Hour Report. — A referendum committee that receives a contribution or transfer of funds shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received before a referendum but after the period covered by the last report due before that referendum. The disclosure shall be by report to the State Board of Elections identifying the source and amount of such funds. The State Board of Elections shall specify the form and manner of making the report, including the reporting of in-kind contributions.

(3) Final Report. — The treasurer shall file a final report no later than the tenth day after the referendum. If the final report fails to disclose a final accounting of all contributions and expenditures, a supplemental final report shall be filed no later than January 7, after the referendum, and shall be current through December 31 after the referendum.

(4) Annual Reports. — If contributions are received or expenditures made during a calendar year for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by January 7 of the following year.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported. (1979, c. 1073, s. 6; 1997-515, s. 12(b); 2002-159, s. 21(e); 2008-150, s. 11(b).)

Effect of Amendments. — Session Laws 2008-150, s. 11(b), effective October 1, 2008, in subdivision (a)(2a), deleted "from any political committee" following "transfer of funds" in the first sentence, and added "including the reporting of in-kind contributions" to the end of the last sentence.

§ 163-278.11. Contents of treasurer's statement of receipts and expenditures.

(a) Statements filed pursuant to provisions of this Article shall set forth the following:

(1) Contributions. — Except as provided in subsection (a1) of this section, a list of all contributions received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the contributor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. As used in this section, "principal occupation of the contributor" means the contributor's:
  a. Job title or profession; and
  b. Employer's name or employer's specific field of business activity.

The State Board of Elections shall prepare a schedule of specific fields of business activity, adapting or modifying as it deems suitable the business activity classifications of the Internal Revenue Code or other relevant classification schedules. In reporting a contributor's specific field of business activity, the treasurer shall use the classification schedule prepared by the State Board.

(2) Expenditures. — A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all expenditures in accordance with G.S. 163-278.8(e) and G.S. 163-278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation.

(3) Loans. — Every candidate and treasurer shall attach to the campaign transmittal submitted with each report an addendum listing all proceeds derived from loans for funds used or to be used in this campaign. The addendum shall be in the form as prescribed by the State Board of Elections and shall list the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(a1) Threshold for Reporting Identity of Contributor. — A treasurer shall not be required to report the name, address, or principal occupation of any individual who contributes fifty dollars ($50.00) or less to the treasurer's committee during an election as defined in G.S. 163-278.13. The State Board of Elections shall provide on its reporting forms for the reporting of contributions below that threshold. On those reporting forms, the State Board may require date and amount of contributions below the threshold, but may treat differently for reporting purposes contributions below the threshold that are made in different modes and in different settings.

(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. A political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made. A candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefitted as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure.

(c) Best Efforts. — When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee shall be considered in compliance with this Article and shall not be the basis for criminal prosecution or the imposition of civil penalties, other than forfeiture of a contribution improperly accepted under this Article. The State Board of Elections shall promulgate rules that specify what are "best efforts" for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include a provision that if the treasurer, after complying with this Article and the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report "unable to obtain". (1973, c. 1272, s. 1; 1977, c. 635, s. 2; 1979, c. 1073, s. 20; 1997-515, ss. 2(a), (b), 3(a); 2006-161, s. 4; 2006-195, s. 5; 2007-391, s. 35(a); 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the act. Session Laws 2007-391, s. 35(a), is effective August 19, 2007.

Effect of Amendments. —

Session Laws 2007-391, s. 35(a), effective August 19, 2007, deleted "resident of the State" following "occupation of any individual" in the first sentence of subsection (a1).

§ 163-278.13. Limitation on contributions.

(a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate.

(d1) Notwithstanding subsections (a) and (b) of this section, a candidate or political committee may accept a contribution knowing that the contribution is to be reimbursed to the entity making the contribution and knowing the candidate or political committee has funds sufficient to reimburse the entity making the contribution if all of the following conditions are met:

(1) The entity submits sufficient information of the contribution to the candidate or political committee for reimbursement within 45 days of the contribution.

(2) The candidate or political committee makes a reimbursement to the entity making the contribution within seven days of submission of sufficient information.

(3) The candidate or political committee indicates on its report under G.S. 163-278.11 that the good, service, or other item resulting in the reimbursement is an expenditure of the candidate or political committee, and notes if the contribution was by credit card.

(4) The contribution does not exceed one thousand dollars ($1,000.00).

(d2) Any contribution, or portion thereof, made under subsection (d1) of this section that is not submitted for reimbursement in accordance with subsection (d1) of this section shall be treated as a contribution for purposes of this section. Any contribution, or portion thereof, made under subsection (d1) of this section that is not reimbursed in accordance with subsection (d1) of this section shall be treated as a contribution for purposes of this section.

(e) Except as provided in subsections (e2), (e3), and (e4) of this section, this section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(e2) In order to make meaningful the provisions of Article 22D of this Chapter, the following provisions shall apply with respect to candidates for justice of the Supreme Court and judge of the Court of Appeals:

(1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000) except as provided for elsewhere in this subsection.

(2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars ($2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.

(3) Repealed by Session Laws 2008-150, s. 7(a), effective August 2, 2008.

As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(e3) Notwithstanding the provisions of subsections (a) and (b) of this section, no candidate for superior court judge or district court judge shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000), except as provided in subsection (c) of this section. As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(e4) In order to make meaningful the provisions of the North Carolina Voter-Owned Elections Act, as set forth in Article 22J of this Chapter, no candidate for an office subject to that Article shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election if that contribution causes the candidate to exceed the "trigger for matching funds" defined in G.S. 163-278.96(17). As used in this subsection, the term "candidate" also includes "candidate campaign committee" as defined in G.S. 163-278.38Z(3). Nothing in this subsection shall prohibit a candidate from making a contribution or loan secured entirely by that candidate's assets to that candidate's own campaign or to a political committee, the principal purpose of which is to support that candidate's campaign. This subsection applies with respect to a candidate only if both of the following statements are true regarding that candidate:

(1) That candidate is opposed in the general election by a certified candidate as defined in Article 22J of this Chapter.

(2) That certified candidate has not received the maximum matching funds available under G.S. 163-278.99B(c).

The recipient of a contribution that apparently violates this subsection has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subsection.

(e5) The contribution limits of subsections (a) and (b) of this section do not apply to contributions made to an independent expenditure political committee. For purposes of this section, an "independent expenditure political committee" is a political committee whose treasurer makes and abides by a certification to the State Board of Elections that the political committee does not and will not make contributions, directly or indirectly, to candidates or to political committees that make contributions to candidates. The State Board of Elections shall provide forms for implementation of this subsection. This subsection shall not apply to a candidate or a political committee controlled by a candidate. The exception of this subsection is in addition to any other exception provided by law.

(f) Any individual, candidate, political committee, referendum committee, or other entity that violates the provisions of this section is guilty of a Class 2 misdemeanor. (1973, c. 1272, s. 1; 1979, c. 1073, ss. 8, 20; 1981, c. 225; 1987, c. 565, s. 15; 1993, c. 539, s. 1113; 1994, Ex. Sess., c. 24, s. 14(c); 1997-515, s. 8(a); 1999-31, s. 5(c); 2002-158, s. 2; 2006-192, ss. 15, 16, 17; 2007-391, s. 36; 2007-484, s. 43.8(c); 2007-510, s. 1(c); 2007-540, ss. 2, 3; 2008-150, ss. 6(c), 7(a); 2008-187, s. 33(a).)

Editor's Note. —

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 36, is effective August 19, 2007.

Effect of Amendments. —

Session Laws 2007-391, s. 36, effective August 19, 2007, added subsections (d1) and (d2).

Session Laws 2008-150, ss. 6(c) and 7(a), effective August 2, 2008, added subsection (e5); and repealed subdivision (e2)(3).

CASE NOTES

Constitutionality. —

Because the application of a $4,000 contribution limit to political committees that make independent expenditures, as defined in G.S. 163-278.6(9a), does not further the state's interest in preventing corruption, G.S. 163-278.13 violates the First Amendment insofar as G.S. 163-278.13 is applied to independent expenditure political committees. N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 2008 U.S. App. LEXIS 9426 (4th Cir. 2008).

Ban on contributions during the twenty-one days prior to an election under the Judicial Campaign Reform Act, G.S. 163-278.13(e2)(3), did not violate the First Amendment because the ban was a closely drawn means of advancing the state's interest in operating a public funding system to minimize the danger of corruption, or the appearance thereof, in judicial elections. N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.13C. Campaign contributions prohibition.

(a) No lobbyist may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(30)a. and G.S. 120C-104.

(b) No lobbyist may collect contributions from multiple contributors, take possession of such multiple contributions, or transfer or deliver the collected multiple contributions to the intended recipient. This section shall apply only to contributions to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate is a legislator as defined in G.S. 120C-100 or a public servant as defined in G.S. 138A-3(30)a.

(c) This section shall not apply to a lobbyist, who has filed a notice of candidacy for office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes or has been nominated under G.S. 163-114 or G.S. 163-98, making a contribution to that lobbyist's candidate campaign committee.

(d) For purposes of this section, the term "lobbyist" shall mean an individual registered as a lobbyist under Chapter 120C of the General Statutes. (2006-201, s. 18; 2007-347, s. 5(a), (b); 2008-213, s. 86.)

Effect of Amendments. — Session Laws 2008-213, s. 86, effective August 15, 2008, added "and G.S. 120C-104" to subdivision (a)(2).

§ 163-278.14A. Evidence that communications are "to support or oppose the nomination or election of one or more clearly identified candidates."

(a) The following shall be means of proving that an individual or other entity acted "to support or oppose the nomination or election of one or more clearly identified candidates": presenting evidence of financial sponsorship of communications to the general public that use phrases such as "vote for", "reelect", "support", "cast your ballot for", "(name of candidate) for (name of office)", "(name of candidate) in (year)", "vote against", "defeat", "reject", "vote pro-(policy position)" or "vote anti-(policy position)" accompanied by a list of candidates clearly labeled "pro-(policy position)" or "anti-(policy position)", or communications of campaign words or slogans, such as posters, bumper stickers, advertisements, etc., which say "(name of candidate)'s the One", "(name of candidate) '98", "(name of candidate)!", or the names of two candidates joined by a hyphen or slash.

(b) Notwithstanding the provisions of subsection (a) of this section, a communication shall not be subject to regulation as a contribution or expenditure under this Article if it:

(1) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, or magazine, unless those facilities are owned or controlled by any political party, or political committee;

(2) Is distributed by a corporation solely to its stockholders and employees; or

(3) Is distributed by any organization, association, or labor union solely to its members or to subscribers or recipients of its regular publications, or is made available to individuals in response to their request, including through the Internet. (1999-453, s. 3(a); 2008-150, s. 6(b).)

Effect of Amendments. — Session Laws 2008-150, s. 6(b), effective August 2, 2008, rewrote subsection (a).

CASE NOTES

Constitutionality. —

Former G.S. 163-278.14A(a)(2), which attempts to determine the essential nature of a communication by considering contextual factors, is unconstitutionally overbroad and vague because it regulates speech that is neither express advocacy nor its functional equivalent and, therefore, strays too far from the regulation of elections into the regulation of ordinary political speech. Former G.S. 163-278.14A(a)(2) is not limited to an express group of election-related words, and its ad hoc, context-based, totality of the circumstances approach is susceptible of interpretations other than as an appeal to vote for or against a specific candidate (decided prior to 2008 repeal of subdivision (a)(2)). N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 2008 U.S. App. LEXIS 9426 (4th Cir. 2008).

§ 163-278.16B. Use of contributions for certain purposes.

(a) A candidate or candidate campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

(8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

(b) As used in this section, the term "candidate campaign committee" means the same as in G.S. 163-278.38Z(3).

(c) Contributions made to a candidate or candidate campaign committee do not become a part of the personal estate of the individual candidate. The candidate may file with the board a written designation of those funds that directs to which of the permitted uses in subsection (a) of this section they shall be paid in the event of the death or incapacity of the candidate. After the payment of permitted outstanding debts of the account, the candidate's filed written designation shall control. If the candidate files no such written designation, the funds after payment of permitted outstanding debts shall be distributed in accordance with subdivision (a)(8) of this section. (2006-161, s. 1; 2007-391, s. 30; 2008-187, s. 33(a); 2008-213, s. 87.)

Editor's Note. —

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 30, is effective August 19, 2007.

Effect of Amendments. — Session Laws 2007-391, s. 30, effective August 19, 2007, in subsection (c), substituted "The candidate may file" for "A candidate or the candidate who directs the candidate campaign committee may file" in the second sentence.

Session Laws 2008-213, s. 87, effective August 15, 2008, substituted "Donations" for "Contributions" in subdivision (a)(3).

§ 163-278.27. Criminal penalties; duty to report and prosecute.

(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D, 163-278.40E, or 163-278.40J is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred.

(a1) A violation of G.S. 163-278.32 by making a certification knowing the information to be untrue is a Class I felony.

(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

(1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;

(2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;

(3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and

(4) In the case of a person or any group of individuals: report to the district attorney or district attorneys [of] the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article.

(d) As a condition of probation, a sentencing judge may order that the costs incurred by the State Board of Elections in investigating and aiding the prosecution of a case be paid to the State Board of Elections by the defendant on such terms and conditions as set by the judge. (1973, c. 1272, s. 1; 1979, c. 500, s. 10; c. 1073, ss. 15, 19; 1981, c. 837, s. 4; 1987, c. 565, s. 17; 1993, c. 539, s. 1118; 1994, Ex. Sess., c. 24, s. 14(c); 1999-453, s. 2(c); 2001-419, s. 2; 2006-161, s. 5; 2007-391, s. 1(b); 2008-150, s. 9(b); 2008-187, s. 29.)

Editor's Note. —

Session Laws 2007-391, s. 1(c), as amended by Session Laws 2008-187, s. 33(a), provides: "This section becomes effective December 1, 2007, and applies to offenses committed on or after that date."

Effect of Amendments. — Session Laws 2008-150, s. 9(b), effective December 1, 2008, in subsection (a), inserted "163-278.40J" near the end of the first sentence, and made related changes.

Session Laws 2008-187, s. 29, effective August 7, 2008, substituted "G.S. 163-278.32" for "G.S. 278.32" in subsection (a1).

CASE NOTES

Standing to Raise Constitutional Challenge to Campaign Finance Laws. — Nonprofit corporation and affiliated political committees had standing to assert pre-enforcement challenges to campaign finance laws because the nonprofit corporation and political committees were chilled from engaging in potentially protected First Amendment political expression given that G.S. 163-278.27 subjected the nonprofit corporation and the political committees to the threat of prosecution for intentionally violating the challenged campaign finance statutes. N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 2008 U.S. App. LEXIS 9426 (4th Cir. 2008).

§ 163-278.32. Statements under oath.

Editor's Note. — Session Laws 2007-391, s. 1(c), as amended by Session Laws 2008-187, s. 33(a), provides: "This section becomes effective December 1, 2007, and applies to offenses committed on or after that date."

§ 163-278.34. Civil penalties.

(a) Civil Penalties for Late Filing. — Except as provided in G.S. 163-278.9 and G.S. 163-278.9A, all reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by mail addressed to the Board. Timely filing shall be complete if postmarked on the day the reports, statements or other documents are to be delivered to the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee, referendum committee or treasurer responsible for filing shall pay to the State Board of Elections election enforcement costs and a civil late penalty as follows:

(1) Two hundred fifty dollars ($250.00) per day for each day the filing is late for a report that affects statewide elections, not to exceed a total of ten thousand dollars ($10,000); and

(2) Fifty dollars ($50.00) per day for each day the filing is late for a report that affects only nonstatewide elections, not to exceed a total of five hundred dollars ($500.00).

If the form is filed by mail, no civil late penalty shall be assessed for any day after the date of postmark. No civil late penalty shall be assessed for any day when the Board office at which the report is due is closed. The State Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, by mail, of the penalties under this section. The State Board of Elections may waive a late penalty if it determines there is good cause for the waiver.

If the Board determines by clear and convincing evidence that the late filing constitutes a willful attempt to conceal contributions or expenditures, the Board may assess a civil penalty in an amount to be determined by that Board, plus the costs of investigation, assessment, and collection. The civil penalty shall not exceed three times the amount of the contributions and expenditures willfully attempted to be concealed.

(b) Civil Penalties for Illegal Contributions and Expenditures. — If an individual, person, political committee, referendum committee, candidate, or other entity intentionally makes or accepts a contribution or makes an unlawful expenditure in violation of this Article, then that entity shall pay to the State Board of Elections, in an amount to be determined by that Board, a civil penalty and the costs of investigation, assessment, and collection. The civil penalty shall not exceed three times the amount of the unlawful contribution or expenditure involved in the violation. The State Board of Elections may, in addition to the civil penalty, order that the amount unlawfully received be paid to the State Board by check, and any money so received by the State Board shall be deposited in the Civil Penalty and Forfeiture Fund of North Carolina.

(c) Civil Remedies Other Than Penalties. — The State Board of Elections, in lieu of or in addition to imposing a civil penalty under subsection (a) or (b) of this section, may take one or more of the following actions with respect to a violation for which a civil penalty could be imposed:

(1) Issue an order requiring the violator to cease and desist from the violation found.
(2) Issue an order to cease receiving contributions and making expenditures until a delinquent report has been filed and any civil penalty satisfied.
(3) Issue an order requiring the violator to take any remedial action deemed appropriate by the Board.
(4) Issue an order requiring the violator to file any report, statement, or other information as required by this Article or the rules adopted by the Board.
(5) Publicly reprimand the violator for the violation.

(d) Facts in Mitigation. — An individual or other entity notified that a penalty has been assessed against it may submit an affidavit to the State Board of Elections stating the facts in mitigation. The State Board of Elections may waive a civil penalty in whole or in part if it determines there is good cause for the waiver.

(e) Calculation and Assessment. — The State Board shall calculate and assess the amount of the civil penalty due under subsection (a) or (b) of this section and shall notify the person who is assessed the civil penalty of the amount. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator either to pay the assessment or to contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Board within 30 days after it is due, the Board shall request the Attorney General to institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the report was due to be filed or any county where the violator resides or maintains an office. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment. The State Board of Elections shall pay the clear proceeds of civil penalties collected under this section to the Civil Penalty and Forfeiture Fund pursuant to G.S. 115C-457.2. The State Board of Elections shall reduce the monies collected by the enforcement costs and the collection costs to determine the clear proceeds payable to the Civil Penalty and Forfeiture Fund. Monies set aside for the costs of enforcement and the costs of collection shall be credited to accounts of the State Board of Elections.

(f) Notifying and Consulting With District Attorney. — Before assessing a civil penalty under subsection (b) of this section or imposing a civil remedy under subsection (c) of this section, the State Board of Elections shall notify and consult with the district attorney who would be responsible under G.S. 163-278.27 for bringing a criminal prosecution concerning the violation. (1973,

c. 1272, s. 1; 1975, c. 565, s. 5; 1979, c. 1073, s. 19; 1997-515, s. 7(a); 2001-353, s. 10; 2001-419, s. 1; 2007-391, ss. 2(a), 37; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 37, is effective August 19, 2007.

Effect of Amendments. — Session Laws 2007-391, s. 37, effective August 19, 2007, in subsection (b), added "and Expenditures" in the subsection catchline, and inserted "or makes an unlawful expenditure" following "accepts a contribution" in the first sentence.

Part 2. Municipal Campaign Reporting.

§ 163-278.40. Definitions.

Editor's Note. — Session Laws 2008-97, s. 1, repealed section 2-7 of the Charter of the Town of Carrboro, S.L. 1987, c. 476, as added by S.L. 1993, c. 660, s. 2, which was a local modification for G.S. 163-278.6 and 163-278.40.

§ 163-278.40J. Other committees report by municipal schedule.

A candidate or political committee that appoints a treasurer under G.S. 163-278.7 shall make reports according to the schedule under this Part if it makes contributions or expenditures concerning municipal elections. (2008-150, s. 9(a).)

Editor's Note. — Session Laws 2008-150, s. 9(e), made this section effective December 1, 2008.

Article 22D.

The North Carolina Public Campaign Fund.

§ 163-278.61. Purpose of the North Carolina Public Campaign Fund.

CASE NOTES

Cited in N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.62. Definitions.

CASE NOTES

Cited in N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.64. Requirements for participation; certification of candidates.

CASE NOTES

Cited in N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.65. Distribution from the Fund.

CASE NOTES

Cited in N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.66. Reporting requirements.

(a) Reporting by Noncertified Candidates and Other Entities. — Any noncertified candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate, or paying for electioneering communications, referring to one of those candidates, shall report the total expenditures or payments made to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or payments made for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24-hour filing, the noncertified candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be supplied by the Board.

(b) Reporting by Participating and Certified Candidates. — Notwithstanding other provisions of law, participating and certified candidates shall report any money received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. — The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information. (2002-158, s. 1; 2003-278, s. 2; 2006-192, s. 12; 2007-510, s. 1(a), (c); 2008-150, s. 10.2(a).)

Editor's Note. — The catchline to subsection (a) of this section read: "Reporting by Noncertified Candidates and Independent Expenditure Entities" in Session Laws 2007-510, s. 1(a). It was amended by Session Laws 2008-150, s. 10.2(a), to substitute "Reporting by Noncertified Candidates and Other Entities" for "Reporting by Participating and Certified Candidates." Subsection (a) has been set out as amended at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 2008-150, s. 10.2(a), effective August 2, 2008, rewrote subsection (a).

CASE NOTES

Constitutionality. — Reporting requirements under the Judicial Campaign Reform Act, G.S. 163-278.66(a), did not violate the First Amendment because the reporting requirements clearly demonstrated a substantial relation to the important state interests of providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions. N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.67. Matching funds.

(a) When Matching Funds Become Available. — When any report or group of reports shows that "funds in opposition to a certified candidate or in support of an opponent to that candidate" as described in this section, exceed the trigger for matching funds as defined in G.S. 163-278.62(18), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. "Funds in opposition to a certified candidate or in support of an opponent to that candidate" shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:

a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating candidate who is an opponent of a certified candidate. Where a certified candidate has more than one nonparticipating candidate as an opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.

b. The funds distributed in accordance with G.S. 163-278.65(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163-278.66(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds in Contested Primary. — Total matching funds to a certified candidate in a contested primary shall be limited to an amount equal to two times the maximum qualifying contributions for the office sought.

(c) Limit on Matching Funds in Contested General Election. — Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.65(b)(4).

(c1) Expedited Distribution of Matching Funds. — When a candidate becomes entitled to any amount of matching funds under subsection (a) of this section, the Board shall authorize the issuance of that amount to the candidate as soon as practicable. The Department of Administration shall transfer that amount to the candidate as soon as practicable and in no event later than 12 hours after receiving notice from the Board that the candidate has become entitled to it. The Department of Administration shall develop a method of rapidly transferring funds to a candidate or otherwise fulfilling the requirements of this subsection in conjunction with the Board. The candidate shall return to the Board as soon as practicable any amount of the matching funds that the candidate has not spent at the date of the election or at the time the individual ceases to be a certified candidate, whichever occurs first.

(d) Determinations by Board. — In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications. — In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall include the proportion of expenditures, obligations, or payments for multicandidate communications that pertain to the candidate. (2002-158, s. 1; 2007-510, s. 1(b); 2008-150, s. 7(b).)

Effect of Amendments. —
Session Laws 2008-150, s. 7(b), effective August 2, 2008, added subsection (c1).

CASE NOTES

Constitutionality. — Provision for providing matching funds set forth in G.S. 163-278.67 did not violate the First Amendment because the Judicial Campaign Reform Act, G.S. 163-278.61 et seq., did not coerce candidates into opting into the public financing system, and, to the extent that the plaintiffs (or those similarly situated) were in fact deterred by G.S. 163-278.67 from spending in excess of the trigger amounts, the deterrence resulted from a strategic, political choice, not from a threat of government censure or prosecution. N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.69. Voter education.

(a) Judicial Voter Guide. — The Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Public Campaign Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. — The Judicial Voter Guide shall include information concerning all candidates for the Supreme Court and the Court of Appeals, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.

(3) Occupation.
(4) Employer.
(5) Date admitted to the bar.
(6) Legal/judicial experience.
(7) Candidate statement, limited to 150 words. Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, your ratings, why you are seeking judicial office, why you would make a good judge, what distinguishes you from your opponent(s), your acceptance of spending and fund-raising limits to qualify to receive funds from the Public Campaign Fund, and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement."

(c) Disclaimer. — The Judicial Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections." (2002-158, s. 1; 2005-276, s. 23A.1(d); 2005-430, s. 6; 2006-192, s. 14; 2007-391, s. 4(a); 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 4(a), is effective August 19, 2007.

CASE NOTES

Cited in N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

ARTICLE 22E.

Electioneering Communications.

§ 163-278.82. Prohibition of corporate and labor disbursements for electioneering communications.

(a) Prohibition. — No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing or airing any electioneering communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article.

(b) Direct or Indirect Disbursement. — An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. — Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced.

(d) Limitation on Prohibition. — The prohibition in this section shall not apply unless the electioneering communication at issue is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. (2004-125, s. 1; 2005-430, s. 9(b); 2006-182, s. 3(a); 2008-150, s. 10.3(a).)

Effect of Amendments. —

Session Laws 2008-150, s. 10.3(a), effective August 2, 2008, added subsection (d).

ARTICLE 22F.

Mass Mailings and Telephone Banks: Electioneering Communications.

§ 163-278.92. Prohibition of corporate and labor disbursements for electioneering communications.

(a) Prohibition. — No prohibited source may make any disbursement for the costs of producing or transmitting any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing or transmitting any electioneering communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article.

(b) Direct or Indirect Disbursement. — An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. — Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced.

(d) Limitation on Prohibition. — The prohibition in this section shall not apply unless the electioneering communication at issue is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. (2004-125, s. 2; 2005-430, s. 9(d); 2006-182, s. 3(b); 2008-150, s. 10.3(b).)

Effect of Amendments. — Session Laws 2008-150, s. 10.3(b), effective August 2, 2008, added subsection (d).

Article 22J.

The Voter-Owned Elections Act.

§ 163-278.99A. Reporting requirements.

(a) Reporting by Noncertified Candidates and Other Entities. — Any nonparticipating candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24-hour filing, the nonparticipating candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall [be] supplied by the Board.

(b) Reporting by Participating and Certified Candidates. — Notwithstanding other provisions of law, participating and certified candidates shall report any money received and all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues from the Fund remaining unspent shall return those revenues to the Board. In developing these procedures, the Board shall utilize existing campaign reporting procedures wherever practicable.

(c) Timely Access to Reports. — The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information. (2007-484, s. 43.8(c); 2007-540, s. 1; 2008-150, s. 10.2(b).)

Editor's Note. — The bracketed word "be" has been inserted in subsection (a) at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-150, s. 10.2(b), effective August 2, 2008, rewrote subsection (a).

§ 163-278.99E. Voter education.

(a) Voter Guide. — The Board shall publish a Voter Guide that explains the functions of office as defined in G.S. 163-278.96(12) and the laws concerning the election of the Council of State, the purpose and function of the Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The State Board of Elections shall maintain a list of the addresses from which mailed Voter Guides are returned as undeliverable. That list shall be available for public inspection.

The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. — The Voter Guide shall include information concerning all candidates for office as defined in G.S. 163-278.96(12), as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Previous elective offices held.
(6) Endorsements, limited to 50 words. Concerning endorsements, the Board shall send to the candidates instructions as follows: "In order to have an endorsement published, you must provide written confirmation to the Board from the endorsing person or organization that you received that person's or organization's endorsement."
(7) Candidate statement, limited to 150 words. Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, why you would make a good elected official, what distinguishes you from your opponent(s), and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement."

(c) Disclaimer. — The Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections."

(d) Relationship to the Judicial Voter Guide. — The Board may publish the Voter Guide in conjunction with the Judicial Voter Guide described in G.S. 163-278.69. (2007-391, s. 4(b); 2007-484, s. 43.8(c); 2007-540, s. 1; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-187, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 4(b), is effective August 19, 2007.

Effect of Amendments. — Session Laws 2007-391, s. 4(b), effective August 19, 2007, substituted "28 days" for "14 days" twice in the last sentence of subsection (a).

ARTICLE 22H.

Mass Mailings and Telephone Banks: Candidate-Specific Communications.

§ 163-278.110. Definitions.

As used in this Article, the following terms have the following definitions:

(1) The term "candidate-specific communication" means any mass mailing or telephone bank that has all the following characteristics:
  a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is made in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.90(2)b.

c. Is targeted to the relevant electorate.

(2) The term "candidate-specific communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication that is distributed by a corporation solely to its shareholders or employees or by a labor union or professional association solely to its members.

e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

f. An electioneering communication as defined in Article 22F of this Chapter.

g. A public opinion poll conducted by a newspaper, periodical, or other news gathering organization.

(3) The term "disclosure date" means either of the following:

a. The first date during any calendar year when a candidate-specific communication is transmitted after an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(4) The term "mass mailing" means any mailing by United States mail or facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of "mass mailing" under the definition of "print media," and that definition does not apply in this Article.

(5) The term "race" means a ballot item, as defined in G.S. 163-165(2), in which the voters are to choose between or among candidates.

(6) The term "targeted to the relevant electorate" means:

a. With respect to a statewide race:

1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30-day period.

b. With respect to a race for the General Assembly:
   1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30-day period; or
   2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30-day period.

(7) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(8) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article. (2006-233, s. 2; 2007-391, s. 31; 2007-510, s. 2; 2008-187, s. 33(a).)

Editor's Note. —
Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the act. Session Laws 2007-391, s. 31, is effective August 19, 2007.

Effect of Amendments. — Session Laws 2007-391, s. 31, effective August 19, 2007, added subdivision (8).

SUBCHAPTER IX. MUNICIPAL ELECTIONS.

ARTICLE 23.

Municipal Election Procedure.

§ 163-283. Right to participate or vote in party primary.

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

(1) Is a registered voter, and

(2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and

(3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-119 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the primary after being registered, provided however, under full-time and permanent registration, such an individual may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. (1971, c. 835, s. 1; 1983, c. 331, s. 5; 1987, c. 408, s. 5; c. 457, s. 2; 1991 (Reg. Sess., 1992), c. 1032, s. 8; 1993 (Reg. Sess., 1994), c. 762, s. 62; 2008-150, s. 5(c).)

Editor's Note. — The amendment to this section by Session Laws 2008-150, s. 5(c), included replacing a citation to G.S. 163-116 with a citation to G.S. 163-119. However, the substitution had been made previously.

Effect of Amendments. — Session Laws 2008-150, s. 5(c), effective August 2, 2008, in the second paragraph, substituted "G.S. 163-119" for "G.S. 163-116"; and in the third paragraph, deleted "or residence" following "qualified by age" near the beginning.

§ 163-285. Administration by county board of elections; optional by Morganton, Granite Falls, Old Fort, and Rhodhiss.

(a) The City of Morganton, the Town of Old Fort, the Town of Granite Falls, and the Town of Rhodhiss may conduct their own elections, or they may request the county board of elections of the county in which they are located to conduct their elections. A county board of elections shall conduct the elections of each municipality so requesting and the municipality shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the municipal council. The elections for any other municipality shall be conducted by the county board of elections, and the municipality shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the municipal council. If a mutual agreement cannot be reached, then the State Board of Elections shall prescribe the agreement, to which both parties are bound.

(1) The elections of municipalities which lie in more than one county shall be conducted either (i) by the county in which the greater number of the municipality's citizens reside, according to the most recent federal census of population, or (ii) jointly by the boards of elections of each county in which such municipality is located, as may be mutually agreed upon by the county boards of elections so affected, or (iii) in the case of the City of Morganton or the Towns of Old Fort, Granite Falls, or Rhodhiss, by a municipal board of elections appointed by the governing body of the municipality. The State Board of Elections shall have authority to promulgate regulations for more detailed administration and conduct of municipal elections by county or municipal boards of elections for municipalities situated in more than one county.

(2) Any municipality electing to have its elections conducted by the county board of elections as provided by this section, shall do so no later than January 1, 1973 provided, however, the county board of elections shall be entitled to 90 days' notice prior to the effective date decided upon by the municipality. For efficient administration the State Board of Elections shall have the authority to delay the effective date of all such agreements under this section and shall set a date certain on which such agreements shall commence. The State Board of Elections shall also have the authority to permit any municipality to exercise the options under this Article subsequent to the deadline stated in this section.

(3) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 63.

(b) The county board of elections shall have authority to require maps or definitive outlines of the boundaries constituting any municipality or special district whose elections that county board administers and shall be immediately advised of any change or relocation of such boundaries.

(c) The term "special district" includes a sanitary district, fire district, or school administrative unit, notwithstanding the fact that the taxes of the special district may be levied by a municipality.

(d) All election results of elections held under this Article shall be reported to the State Board within 30 days of the certification of the election. (1971, c. 835, s. 1; 1973, c. 171; 1993 (Reg. Sess., 1994), c. 762, s. 63; 2001-374, s. 2; 2007-391, s. 38; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 38, is effective August 19, 2007.

Effect of Amendments. — Session Laws 2007-391, s. 38, effective August 19, 2007, added subsection (d).

ARTICLE 24.

Conduct of Municipal Elections.

§ 163-291. Partisan primaries and elections.

Instant Runoff Voting Pilot Program. — Session Laws 2008-150, s. 3, provides: "The State Board of Elections is authorized to select elections for offices of local government in which to use instant runoff voting in up to 10 local jurisdictions in each of the following years: 2009, 2010, and 2011. The selection of jurisdictions and administration of instant runoff voting shall follow the provisions of Section 1(a) of Session Law 2006-192, except that the local governing board that is the subject of the election must approve participation in the pilot and also must agree to cooperate with the county board of elections and the Board in the development and implementation of a plan to educate candidates and voters about how to use the runoff voting method. In a multiseat contest, the Board shall modify the method used for instant runoff voting in single-seat contests to apply its essential principles suitably to that election. In the case of a board of education election where the 'local governing board' must be asked to authorize instant runoff voting because nonpartisan plurality elections are normally used, the 'local governing board' is the board of education itself. If instant runoff voting is used in place of the nonpartisan election and runoff method as described in G.S. 163-293, the county board of elections, with the approval of the local governing board, may hold the election on the first Tuesday after the first Monday in November. The State Board of Elections, in consultation with the School of Government at the University of North Carolina, shall by January 1, 2009, develop for the pilot program authorized in this section goals, standards consistent with general election law, and criteria for implementation and evaluation. The pilot program shall be conducted according to those goals, standards, and criteria."

§ 164-10. Supplements to the General Statutes; rearrangement of laws, and correction of errors.

Editor's Note. — Session Laws 2008-211, enacted improvements to the rules on the management of stormwater in the coastal counties in order to protect water quality, which superceded the former rules. The act is noted in full under G.S. 143-214.7. Session Laws 2008-211, s. 7, provides: "Provisions of Act Not Codified; Set Out As Note. — Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of theprovisions of this act. The Revisor of Statutes shall set out the text of this act as a noteto G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate."

Chapter 165.

Veterans.

Article 4.

Scholarships for Children of War Veterans.

Sec.
165-20. Definitions.
Sec.
165-21. Scholarship.

Article 1.

Department of Administration.

§ 165-6. Powers and duties of the Department.

Editor's Note. — Session Laws 2008-107, s. 22.6(a) and (b), provides: "(a) The Office of State Budget and Management, in consultation with the Department of Administration, shall study the level of State assistance provided to county veterans service programs by the Aid to Counties program within the Department of Administration pursuant to G.S. 165-6(9). The Office will collect data from county programs, including a five-year analysis of county spending, the number and type of veteran claims filed, and the number of FTE staff assigned to the county programs, to assess the level of services provided. The study should examine the effect of changing the amount of assistance that a county is eligible to receive pursuant to G.S. 165-6(9). The study should include an analysis of the number of claims filed with each veterans service program; total county spending for the programs; and the county veteran population. The study should also include a section on recommended statutory changes, budgetary increases, distribution reallocations, and administrative changes to the Division of Veterans Affairs.

"(b) The Office of State Budget and Management shall submit a final report of its findings and recommendations to the House Appropriations Subcommittee on General Government, the Senate Appropriations Subcommittee on General Government and Information Technology, and the Fiscal Research Division no later than March 1, 2009."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 4.

Scholarships for Children of War Veterans.

§ 165-20. Definitions.

As used in this Article the terms defined in this section shall have the following meaning:

(1) "Active federal service" means full-time duty in the armed forces other than active duty for training; however, if disability or death occurs while on active duty for training (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, such active duty for training shall be considered as active federal service.

(2) "Armed forces" means the army, navy, marine corps, air force and coast guard, including their reserve components.

(3) "Child" means a person: (i) under 25 years of age at the time of application for a scholarship, (ii) who is a domiciliary of North Carolina and is a resident of North Carolina when applying for a scholarship, (iii) who has completed high school or its equivalent prior to receipt of a scholarship awarded under this Article, (iv) who has complied with the requirements of the Selective Service System, if applicable, and (v) who further meets one of the following requirements:

a. A person whose veteran parent was a legal resident of North Carolina at the time of said veteran's entrance into that period of service in the armed forces during which eligibility is established under G.S. 165-22.

b. A veteran's child who was born in North Carolina and has been a resident of North Carolina continuously since birth. Provided, that the requirement in the preceding sentence as to birth in North Carolina may be waived by the Department of Administration if it is shown to the satisfaction of the Department that the child's mother was a native-born resident of North Carolina and was such resident at the time of her marriage to the veteran and was outside the State temporarily at the time of the child's birth, following which the child was returned to North Carolina within a reasonable period of time where said child has since lived continuously.

c. A person meeting either of the requirements set forth in subdivision (3) a or b above, and who was legally adopted by the veteran prior to said person's reaching the age of 15 years.

(4) "Period of war" and "wartime" shall mean any of the periods or circumstances as defined below:

a. World War I, meaning (i) the period beginning on April 6, 1917 and ending on November 11, 1918, and (ii) in the case of a veteran who served with the United States armed forces in Russia, the period beginning on April 6, 1917 and ending on April 1, 1920.

b. World War II, meaning the period beginning on December 7, 1941 and ending on December 31, 1946.

c. Korean Conflict, meaning the period beginning on June 27, 1950 and ending on January 31, 1955.

d. Vietnam era, meaning the period beginning on August 5, 1964, and ending on May 7, 1975.

d1. Persian Gulf War, meaning the period beginning on August 2, 1990, and ending on the date prescribed by Presidential proclamation or concurrent resolution of the United States Congress.

e. Any period of service in the armed forces during which the veteran parent of an applicant for a scholarship under this Article suffered death or disability (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war.

(5) "Private educational institution" means any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of G.S. 165-22.1, of this Article, and which is otherwise approved by the State Board of Veterans Affairs.

(6) "State educational institution" means any constituent institution of The University of North Carolina, or any community college operated

under the provisions of Chapter 115D of the General Statutes of North Carolina.

(7) "Veteran" means a person who served as a member of the armed forces of the United States in active federal service during a period of war and who was separated from the armed forces under conditions other than dishonorable. A person who was separated from the armed forces under conditions other than dishonorable and whose death or disability was incurred (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, shall also be deemed a "veteran" and such death or disability shall be considered wartime service-connected. (1967, c. 1060, s. 8; 1969, c. 720, s. 3; c. 741, ss. 1, 2; 1971, c. 339; 1973, c. 620, s. 9; c. 755; 1975, c. 160, s. 1; 1977, c. 70, s. 27; 1985, c. 39, s. 2; c. 788; 1989, c. 767, s. 1; 1991, c. 549, s. 1; 2001-424, s. 7.1(a); 2002-126, s. 19.3(a); 2008-107, s. 19.2(b); 2008-187, s. 48; 2008-192, s. 11.)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2008-192, s. 11, which amended subdivision (6) by inserting "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts'" following "North Carolina School of the Arts" was repealed by Session Laws 2008-187, s. 48, which provided that the section was repealed if House Bill 2436, 2007 Regular Session [2008-107] and Senate Bill 2015, 2007 Regular Session [2008-192] become law.

Effect of Amendments. — Session Laws 2008-107, s. 19.2(b), effective July 1, 2008, rewrote subdivision (6).

§ 165-21. Scholarship.

(a) A scholarship granted pursuant to this Article shall consist of the following benefits in either a State or private educational institution:

(1) With respect to State educational institutions, unless expressly limited elsewhere in this Article, a scholarship shall consist of:
  a. Tuition at the State educational institution.
  b. A standard board allowance.
  c. A standard room allowance.
  d. Matriculation and other institutional fees required to be paid as a condition to remaining in the institution and pursuing the course of study selected.

(2) With respect to private educational institutions, a scholarship shall consist of a monetary allowance as prescribed in G.S. 165-22.1(d).

(3) Only one scholarship may be granted pursuant to this Article with respect to each child and it shall not extend for a longer period than four academic years, which years, however, need not be consecutive.

(4) No educational assistance shall be afforded a child under this Article after the end of an eight-year period beginning on the date the scholarship is first awarded. Those persons who have been granted a scholarship under this Article prior to the effective date of this act shall be entitled to the remainder of their period of scholarship eligibility if used prior to August 1, 2010. Whenever a child is enrolled in an educational institution and the period of entitlement ends while enrolled in a term, quarter or semester, such period shall be extended to the end of such term, quarter or semester, but not beyond the entitlement limitation of four academic years.

(5) A scholarship awarded to a student under this section shall not exceed the cost of attendance at the State educational institution at which

the student is enrolled. If a student, who is eligible for a scholarship under this section, also receives a scholarship or other grant covering the cost of attendance at the State educational institution for which the scholarship is awarded, then the amount of the scholarship shall be reduced by an appropriate amount determined by the State educational institution at which the student is enrolled. The scholarship shall be reduced so that the sum of all grants and scholarship aid covering the cost of attendance received by the student, including the scholarship under this section, shall not exceed the cost of attendance for the State educational institution at which the student is enrolled.

(b) Repealed by Session Laws 2002-126, s. 19.3(b), effective November 1, 2002.

(c) If a child is awarded a scholarship under this Article, the Commission shall notify the recipient by May 1st of the year in which the recipient enrolls in college. (1967, c. 1060, s. 8; 1969, c. 741, s. 3; 1975, c. 137, s. 1; 1989, c. 767, s. 2; 2001-424, s. 7.1(b); 2002-126, s. 19.3(b); 2008-107, s. 19.2(a).)

Editor's Note. —

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 19.2(a), effective July 1, 2008, added "at the State educational institution" in subdivision (a)(1)a.; in subdivisions (a)(1)b. and (a)(1)c., substituted "standard" for "reasonable" and made minor punctuation changes; in subdivision (a)(1)d., deleted "excluding charges or fees for books, supplies, tools and clothing" at the end and made a minor grammatical change; and added subdivision (a)(5).

Chapter 166A.

North Carolina Emergency Management Act.

Article 1.

North Carolina Emergency Management Act of 1977.

Sec.
166A-14. Immunity and exemption.

Article 1.

North Carolina Emergency Management Act of 1977.

§ 166A-1. Short title.

Editor's Note. —

Session Laws 2008-162, s. 1, provides: "The Division of Emergency Management, in consultation with the North Carolina Association of County Commissioners, shall study ways and develop plans to increase the capabilities of counties to plan for, respond to, and manage disasters at the local level. Plans developed shall include time lines for implementation and estimates of funding needs and shall address:

"(1) Mandating, if determined necessary, the establishment and maintenance of emergency management agencies at the county level.

"(2) Increasing the number of counties employing full-time emergency management coordinators, such that every county in the State, either individually or pursuant to a joint undertaking between two or more counties, has a full-time local emergency management coordinator available.

"(3) Implementing an emergency management certification requirement for all local emergency management coordinators and other essential local emergency management personnel.

"(4) Developing a model registry for use by the counties in identifying functionally and medically fragile persons in need of assistance during a disaster and in allocating resources to meet those needs.

"(5) Establishing a registry program for functionally and medically fragile persons in all counties."

Session Laws 2008-162, s. 2, requires the Division of Emergency Management to report the results of its study no later than December 1, 2008.

Session Laws 2008-181, s. 20.1, proposes a study similar to the study set out in Session Laws 2008-162, s. 1, addressing the capabilities of counties to plan for, respond to, and manage disasters at a local level.

Session Laws 2008-181, ss. 34.1 through 34.7, establish the Joint Select Committee on Emergency Preparedness and Disaster Management Recovery, provide for the composition, meetings and quorum, reimbursement of expenses, and professional and clerical staff support of the Committee, and terminates the Committee on December 31, 2009, or upon the filing of its final report, whichever occurs first.

§ 166A-14. Immunity and exemption.

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker, firm, partnership, association, or corporation complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(a1) The immunity provided to firms, partnerships, associations, or corporations, under subsection (a) of this section, is subject to all of the following conditions:

(1) The immunity applies only when the firm, partnership, association, or corporation is acting without compensation or with compensation limited to no more than actual expenses, and one of the following applies:
  a. Emergency management services are provided at any place in this State during a state of disaster or state of emergency declared by the Governor pursuant to this Article or G.S. 14-288.15, and the services are provided under the direction and control of the Secretary of the Department of Crime Control and Public Safety pursuant to G.S. 166A-5, 166A-6, and 143B-476, or the Governor.
  b. Emergency management services are provided during a local state of emergency declared pursuant to Article 36A of Chapter 14 of the General Statutes, and the services are provided under the direction and control of the governing body of any municipality under G.S. 14-288.12 and G.S. 166A-8, the governing body of any county under G.S. 14-288.13 and G.S. 166A-8, or the chair of any board of county commissioners under G.S. 14-288.14 and G.S. 166A-8.
  c. The firm, partnership, association, or corporation is engaged in planning, preparation, training, or exercises with the Division of Emergency Management, the Division of Public Health, or the governing body of each county or municipality under G.S. 166A-7 and G.S. 166A-8 related to the performance of emergency management services or measures.

(2) The immunity shall not apply to any firm, partnership, association, or corporation, or to any employee or agent thereof, whose act or omission caused in whole or in part the actual or imminent disaster or emergency or whose act or omission necessitated emergency management measures.

(3) To the extent that any firm, partnership, association, or corporation has liability insurance, that firm, partnership, association, or corporation shall be deemed to have waived the immunity to the extent of the indemnification by insurance for its negligence. An insurer shall not under a contract of insurance exclude from liability coverage the acts or omissions of a firm, partnership, association, or corporation for which the firm, partnership, association, or corporation would only be liable to the extent indemnified by insurance as provided by this subdivision.

(b) The rights of any person to receive benefits to which the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, and the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing the worker's duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term "emergency management worker" under this section shall also include any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services under G.S. 90-12.2.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges the person would ordinarily possess if performing duties in the State, or political subdivision thereof in which normally employed or rendering services. (1957, c. 950, s. 4; 1975, c. 734, s. 14; 1977, c. 848, s. 2; 1979, c. 714, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, ss. 130, 131; 2002-179, s. 20(b); 2006-81, s. 1; 2008-200, s. 1.)

Editor's Note. — Session Laws 2008-200, s. 2, provides: "This act is effective when it becomes law [August 8, 2008] and applies to any cause of action arising on or after that date and contract of insurance issued or renewed on or after that date."

Effect of Amendments. —

Session Laws 2008-200, s. 1, effective August 8, 2008, inserted "firm, partnership, association, or corporation" in subsection (a); and added subsection (a1). For applicability, see Editor's note.

Chapter 168.

Persons with Disabilities.

Article 1.

Rights.

§ 168-1. Purpose and definition.

Editor's Note. — Session Laws 2008-83, s. 2, provides: "The UNC-CH Division TEACCH Autism Program (TEACCH), in consultation with the School of Government and the Autism Society of NC, shall develop a video to raise awareness of autism for those involved in government and public service, including information on recognizing the signs and symptoms of autism spectrum disorders, and contacts for further information on appropriate responses to individuals with autism."

Chapter 168A.

Persons with Disabilities Protection Act.

§ 168A-1. Title.

Editor's Note. — Session Laws 2008-83, s. 2, provides: "The UNC-CH Division TEACCH Autism Program (TEACCH), in consultation with the School of Government and the Autism Society of NC, shall develop a video to raise awareness of autism for those involved in government and public service, including information on recognizing the signs and symptoms of autism spectrum disorders, and contacts for further information on appropriate responses to individuals with autism."

Constitution of North Carolina

ARTICLE I

DECLARATION OF RIGHTS

Section 1. The equality and rights of persons.

CASE NOTES

II. Occupations and Business.

II. OCCUPATIONS AND BUSINESS.

Contract Rights of State Employees. — State Governor, Controller and Budget Officer violated the Contract Clause of the United States Constitution, N.C. Const., Art. V, § 6(2) and Art. I, §§ 1 and 19 by issuing an executive order requiring state employers to forward their retirement system contributions for certain months to the state treasury to assist in balancing the budget. The actuarially unsound diversion of funds impaired the state employees' contract rights. Stone v. State, — N.C. App. —, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (Aug. 5, 2008).

Sec. 6. Separation of powers.

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in Stone v. State, — N.C. App. —, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (Aug. 5, 2008).

Sec. 14. Freedom of speech and press.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Cited in Craven v. Cope, — N.C. App. —, 656 S.E.2d 729, 2008 N.C. App. LEXIS 266 (2008); Petroleum Traders Corp. v. State, — N.C. App. —, 660 S.E.2d 662, 2008 N.C. App. LEXIS 1003 (2008).

Sec. 16. Ex post facto laws.

CASE NOTES

Town Ordinance Did Not Violate Ex Post Facto Clause. — Woodfin, N.C., Ordinances § 130.03, which prohibited registered sex offenders from knowingly entering any public park owned and operated by a town, did not violate the Ex Post Facto Clause since: (1) the town meeting minutes revealed a non-punitive intention to maintain the parks for the enjoyment and safety of the people of the town; (2) a sex offender's claim that the ordinance banished the offender from public spaces was rejected; (3) the ordinance was not deemed punitive merely because it was not narrowly tailored since restrictions on a person's activities could be imposed without being punitive; and (4) the ordinance did not subject registered sex offenders to affirmative disability or restraint since they could still travel freely and attend to their daily functions. Standley v. Town of Woodfin, 186 N.C. App. 134, 650 S.E.2d 618, 2007 N.C. App. LEXIS 2121 (2007).

Sec. 18. Courts shall be open.

CASE NOTES

V. Speedy Criminal Trials.

V. SPEEDY CRIMINAL TRIALS.

Defendant was not deprived of his constitutional right to a speedy trial, etc.

Defendant's constitutional right to a speedy trial under N.C. Const., Art. I, § 18 and U.S. Const., Amend. VI was not violated because, although a delay of three years and seven months from arrest to trial was exceptionally long, defendant's right to a speedy trial was not impaired as defendant demonstrated no prejudice whatsoever from the delay and he was not incarcerated during the delay; indeed, he moved to another state during the delay. State v. McBride, — N.C. App. —, 653 S.E.2d 218, 2007 N.C. App. LEXIS 2418 (2007).

Defendant Denied Right to Speedy Trial. —

Defendant's right to a speedy trial under the Sixth Amendment and N.C. Const., Art. I, § 18 was violated where, inter alia, the record showed: (1) that much of the over four-year delay between defendant's arrest and defendant's trial was caused by the State's failure to submit evidence to the state bureau of investigation lab to be examined for over three years; (2) that the State's failure to request a comparison of the evidence to a person the State was notified might have been the guilty party; (3) defendant formally asserted defendant's right to a speedy trial more than a year and a half before the trial began; and (4) the delay in bringing defendant to trial prejudiced defendant, as, inter alia, defendant was incarcerated for 366 days prior to trial. State v. Washington, — N.C. App. —, 665 S.E.2d 799, 2008 N.C. App. LEXIS 1625 (2008).

Sec. 19. Law of the land; equal protection of the laws.

CASE NOTES

I. General Consideration.
II. Due Process and the "Law of the Land".
III. Equal Protection.
IV. Rights of Defendants.
    A. In General.
    C. Double Jeopardy.
    D. Right to Counsel.
VII. Taking of Private Property for Public Use.
    E. Illustrative Cases.
IX. Miscellaneous Rights.
XI. Illustrative Cases.
    A. Statutes, Proceedings, etc., Upheld.

I. GENERAL CONSIDERATION.

Applied in State v. Corbett, — N.C. App. —, 661 S.E.2d 759, 2008 N.C. App. LEXIS 1132 (June 17, 2008); State v. McBennett, — N.C. App. —, 664 S.E.2d 51, 2008 N.C. App. LEXIS 1486 (Aug. 5, 2008).

Cited in State v. Gabriel, — N.C. App. —, 665 S.E.2d 581, 2008 N.C. App. LEXIS 1627 (2008) State v. Robinson, — N.C. App. —, 653

S.E.2d 889, 2007 N.C. App. LEXIS 2556 (2007); State v. Davis, — N.C. App. —, 664 S.E.2d 21, 2008 N.C. App. LEXIS 1508 (Aug. 5, 2008)

II. DUE PROCESS AND THE "LAW OF THE LAND".

No Property Right in At-Will Employment. —
Former employee alleged that he had a property interest in continued employment with the City, as created by the City's policy and adopted by ordinance, and that the City violated his due process rights by failing to provide him certain appeal rights following the termination of his employment; however, the employee remained an at-will employee, and the City did not create a property right in his employment when the City adopted the policy. Because the employee had no enforceable property interest, it was unnecessary to address whether the City followed the procedures in the policy; as with the employee's federal due process claim, the absence of a protected property interest doomed the employee's claim under the state constitution. Roberson v. City of Goldsboro, 564 F. Supp. 2d 526, 2008 U.S. Dist. LEXIS 39716 (E.D.N.C. 2008).

Due Process "Property" Interest in Continued Employment. —
Summary judgment for a city in an employee's substantive due process claim arising from the termination of her employment was proper because, inter alia, under Winston-Salem Code of Ordinances § 50-104(g), the employee was never entitled to collect retirement benefits upon her disability and, thus, her interest in those benefits was not a protected property interest; under its code, the city reserved the option to transfer a disabled police officer to another position in the police department or elsewhere in the city. Further, the employee presented no genuine issue as to any arbitrary governmental action that would have substantiated her claim that the city violated her substantive due process rights. Tripp v. City of Winston-Salem, — N.C. App. —, 655 S.E.2d 890, 2008 N.C. App. LEXIS 193 (Feb. 5, 2008).

No Denial of Procedural Due Process. —
Widow failed to demonstrate that the superior court denied her an opportunity to be heard on her appeal of the superior court clerk's order denying her claim for an elective share because the widow had ample opportunity to be heard; due to the voluminous briefing before the superior court, along with the extensive materials already in the record, there was no basis upon which one could conclude that the widow was denied due process. Pope v. Rollins (In re Estate of Pope), — N.C. App. —, 666 S.E.2d 140, 2008 N.C. App. LEXIS 1626 (2008).

Sheriff complied with G.S. 1-339.54(2)a because he sent a condominium owner notice of an execution sale via registered mail more than 30 days prior to the sale of the property to the owner's last known address; because the owner was not located in the county, he was not entitled to have a copy of the notice served on him personally pursuant to G.S. 1-339.54(1). St. Regis of Onslow County, N.C. Owners Ass'n v. Johnson, — N.C. App. —, 663 S.E.2d 908, 2008 N.C. App. LEXIS 1468 (Aug. 5, 2008).

III. EQUAL PROTECTION.

Due Process and Equal Protection Suit Barred by Res Judicata. — Where a student allegedly was treated differently than three boys who assaulted the student, the student's due process and equal protection suit against a county board of education was barred by res judicata because the dismissal of the student's prior suit on grounds of sovereign immunity was a final judgment on the merits for purposes of res judicata; there was identity of the causes of action since the student could have amended the complaint to assert the constitutional claims upon the filing of the board's answer. Herring v. Winston-Salem/Forsyth County Bd. of Educ., — N.C. App. —, 656 S.E.2d 307, 2008 N.C. App. LEXIS 231 (2008).

IV. RIGHTS OF DEFENDANTS.

A. In General.

Judge's Remarks on Failure to Accept Plea Agreement. — Defendant's right to a jury trial was not violated at sentencing despite the trial judge's remarks about defendant's rejection of the plea offer because the judge focused on defendant's submission of false testimony and "fabricated" evidence in justifying the sentence imposed. State v. Tice, — N.C. App. —, 664 S.E.2d 368, 2008 N.C. App. LEXIS 1507 (2008).

Reservation of Ruling on Motion to Dismiss. — When defendants moved to dismiss charges at the close of all the evidence, a trial court's reservation of a ruling on defendants' motions, which was contrary to G.S. 15A-1227(c), requiring the court to rule immediately, did not create reversible error or violate defendants' rights under U.S. Const., Amends. V and XIV, or N.C. Const., Art. I, § 19, because no prejudice was shown, as required by G.S. 15A-1443; it was more likely that the trial court would have denied the motions had the court not deferred the court's ruling, and the evidence was sufficient to withstand the motions to dismiss. State v. Hernandez, — N.C. App. —, 655 S.E.2d 426, 2008 N.C. App. LEXIS 76 (2008).

C. Double Jeopardy.

Plea of Double Jeopardy May Be Waived. —
Defendant's contention that the trial court erred in sentencing defendant to consecutive

terms in prison for defendant's two convictions of first-degree sexual offense violated double jeopardy, was not preserved for appellate review because it was not presented to the trial court; in any event, defendant's contention had to be rejected because the sentences were based on separate and distinct acts and did not constitute multiple punishments for a single offense. State v. Gobal, 186 N.C. App. 308, 651 S.E.2d 279, 2007 N.C. App. LEXIS 2199 (2007).

Double Jeopardy Not Shown. — Where defendant restrained a victim and prevented the victim from leaving her home by holding onto her shirt and pulling her back from the door before defendant subsequently committed a robbery of the same victim with a dangerous weapon, a separate conviction of defendant for kidnapping, in violation of G.S. 14-39(a)(2), was proper and not violative of U.S. Const., Amend. XIV and N.C. Const., Art. I, § 19; the restraint and removal of the victim was a distinct criminal transaction that facilitated the accompanying felony offense. State v. Boyce, 361 N.C. 670, 651 S.E.2d 879, 2007 N.C. LEXIS 1104 (2007).

Because the evidence showed that defendant fired seven shots toward the victim's car and that one bullet hole was found in the victim's car, it did not violate the double jeopardy clauses of the North Carolina and federal constitutions to impose three separate sentences for three counts of attempted discharge of a firearm into occupied property or to sentence defendant both for the three attempt counts and for one completed offense. Each shot fired at the victim's car was a separate offense under G.S. 14-34.1. State v. Hagans, — N.C. App. —, 656 S.E.2d 704, 2008 N.C. App. LEXIS 259 (2008).

No double jeopardy existed where defendant was convicted of both discharging a firearm into a vehicle and felony murder, because North Carolina does not recognize the merger doctrine. State v. Jackson, — N.C. App. —, 659 S.E.2d 73, 2008 N.C. App. LEXIS 689 (2008).

Defendant's revocation of his post-release supervision for leaving his residence without notifying his post-release officer and failing to notify the post-release officer of his whereabouts, and defendant's prosecution for failing to notify the sheriff of his change of address as a sex offender, as required by G.S. 14-208.9 and in violation of G.S. 14-208.11, did not violate defendant's double jeopardy rights under either N.C. Const., Art. I, § 19 or the Double Jeopardy Clause of the Fifth Amendment. The revocation was not a criminal proceeding and related to defendant's original sex offense convictions rather than the offense of failing to notify the sheriff of a change of address. State v. Sparks, 362 N.C. 181, 657 S.E.2d 655, 2008 N.C. LEXIS 149 (2008).

Use of defendant's prior conviction for possession of cocaine to support defendant's conviction for possession of a firearm by a felon and defendant's sentencing as a habitual felon did not constitute double jeopardy. State v. Williams, — N.C. App. —, 662 S.E.2d 397, 2008 N.C. App. LEXIS 1152 (2008).

Double Jeopardy Shown in Rape Convictions. — In a case in which the defendant and an accomplice raped a woman, defendant was entitled to a new trial on the charge of first degree rape by acting in concert with someone else because the jury instruction referred to guilt both as a principle and by acting in concert, which allowed the jury to convict defendant twice for the same crime, in violation of double jeopardy rights. State v. Person, — N.C. App. —, 653 S.E.2d 560, 2007 N.C. App. LEXIS 2574 (2007).

D. Right to Counsel.

Conflict of Interest. — Defendant's rights under the Sixth Amendment and N.C. Const., Art. I, §§ 19 and 23 were not violated by the denial of defense counsel's motion to withdraw since an inquiry was conducted into counsel's allegation that counsel had a conflict of interest under N.C. Rev. R. Prof. Conduct 1.7(a) because a former client was called as a witness against defendant; there was no conflict since: (1) counsel had represented the witness three years prior to defendant's trial and was no longer representing the witness; (2) counsel had no recollection as to specifics of the witness's case aside from the fact that the witness had been convicted; (3) counsel's statement that counsel would review counsel's file to see if counsel had any information to help defendant proved that counsel was committed to defendant's case; and (4) counsel made significant inroads to undermine the witness's credibility. State v. Thomas, — N.C. App. —, 651 S.E.2d 924, 2007 N.C. App. LEXIS 2309 (2007).

VII. TAKING OF PRIVATE PROPERTY FOR PUBLIC USE.

E. Illustrative Cases.

Retention of the interest or income on unclaimed property by the State of North Carolina and its treasurer pursuant to G.S. 116B-64 of the North Carolina Unclaimed Property Act does not constitute a taking without just compensation in violation of N.C. Const., Art. I, § 19 and the Fifth and Fourteenth Amendments of the United States Constitution. Rowlette v. State, — N.C. App. —, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

Property owners whose dividends and funds had been held by the State of North Carolina and its treasurer under G.S. 116B-64 of the North Carolina Unclaimed Property Act could not claim a compensable taking of their property pursuant to N.C. Const., Art. I, § 19 and the Fifth and Fourteenth Amendments of the United States Constitution because the owners' action in failing to make any use of the property at issue, rather than the action of the State, caused the lapse of the property right and the State did not undertake any overt action to take private property from the owners. Rowlette v. State, — N.C. App. —, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

No Defense of Sovereign Immunity Against State Employees' Takings Claim. — State was not entitled to the defense of sovereign immunity against state employees' takings claim under N.C. Const., Art. I, § 19 because sovereign immunity did not bar the employees' breach of contract claim; therefore, the contract could give rise to an enforceable property right. Carl v. State, — N.C. App. —, 665 S.E.2d 787, 2008 N.C. App. LEXIS 1630 (2008).

IX. MISCELLANEOUS RIGHTS.

Sovereign immunity is not a defense to an action against the State for breach of a contract

Trial court did not err in denying the State's sovereign immunity defense in state employees' breach of contract action because a contract between the State Health Plan and an insurance company was made to confer longterm care benefits directly upon state employees as consideration for their employment; (1) sovereign immunity may be waived when the State enters into a valid contract; (2) when the State waives sovereign immunity, it occupies the same position as any other litigant; (3) when the State occupies the same position as any other litigant, it may be sued by a third party to enforce a contract made for the direct benefit of that third party; and (4) sovereign immunity does not bar third-party beneficiary contract claims against the State. Carl v. State, — N.C. App. —, 665 S.E.2d 787, 2008 N.C. App. LEXIS 1630 (2008).

XI. ILLUSTRATIVE CASES.

A. Statutes, Proceedings, etc., Upheld.

Town Ordinance Barring Sex Offenders from Parks. — Woodfin, N.C., Ordinance § 130.03 was constitutional under the Fourteenth Amendment of the United States Constitution and N.C. Const., Art. I, §§ 19 and 35 as: (1) a sex offender's alleged liberty interest to enter a park owned by a town to have barbecues and enjoy nature was not protected by the right to intrastate travel; (2) an asserted liberty interest to freely roam in parks was not a fundamental right; (3) a town had been delegated the authority to prohibit acts detrimental to its citizens' health, safety, or welfare by G.S. 160A-174; (4) G.S. 14-208.5 recognized that sex offenders posed a high risk of engaging in sex offenses; and (5) Woodfin, N.C., Ordinance § 130.03 was rationally related to a legitimate government interest in protecting children and other visitors to parks owned and operated by the town from sexual attacks. Standley v. Town of Woodfin, 362 N.C. 328, 661 S.E.2d 728, 2008 N.C. LEXIS 496 (2008).

Search and Seizure. — Where an officer observed defendant drive over a curb, back away from the officer, and reach into a pocket in a location known for drug activity, defendant's motion to suppress was properly denied because the officer had reasonable suspicion to make an investigatory stop and had probable cause to seize a film canister from defendant's pocket during a pat-down for weapons based on, inter alia, defendant's actions, the area's reputation, and the officer's prior experiences. State v. Robinson, — N.C. App. —, 658 S.E.2d 501, 2008 N.C. App. LEXIS 648 (Apr. 1, 2008).

Sec. 20. General warrants.

CASE NOTES

I. General Consideration.
II. Warrantless Searches.
III. Search Warrants.

I. GENERAL CONSIDERATION.

Reasonable suspicion is the necessary standard for traffic stops, regardless of whether a traffic violation was readily observed or merely suspected, and to the extent language in State v. Ivey, 360 N.C. 562, 633 S.E.2d 459 (2006), may be interpreted as requiring probable cause, the North Carolina Supreme Court specifically disavows that interpretation. State v. Styles, — N.C. —, 665 S.E.2d 438, 2008 N.C. LEXIS 685 (2008).

Traffic Stop was not Unconstitutional. — Trial court's finding that at the time defendant's vehicle changed lanes without a signal, it was being operated by defendant immediately in front of an arresting officer's vehicle indicated that defendant's failure to signal violated G.S. 20-154(a) because it was clear that changing lanes immediately in front of another vehicle might affect the operation of the trailing vehicle; the officer's observation of the traffic violation gave him the required reasonable suspicion to stop defendant's vehicle such that the stop was not unconstitutional. State v. Styles, — N.C. —, 665 S.E.2d 438, 2008 N.C. LEXIS 685 (2008).

Motion to Suppress Properly Denied. — Trial court properly denied defendant's motion to suppress evidence in the trial of his charge of assault on a law enforcement officer because, even if the police officers' entry into defendant's home was unlawful, the exclusionary rule did not operate to exclude evidence of defendant's assault on the law enforcement officers. State v. Parker, — N.C. App. —, 655 S.E.2d 860, 2008 N.C. App. LEXIS 192 (Feb. 5, 2008).

II. WARRANTLESS SEARCHES.

Drug Dog Sniff. — Where a drug dog sniff was conducted on defendant's vehicle during a traffic stop, defendant's motion to suppress was properly denied because (1) the officers needed no further justification in order to conduct the dog sniff since the initial traffic stop was lawful, and (2) the dog sniff did not unreasonably prolong the detention. State v. Brimmer, — N.C. App. —, 653 S.E.2d 196, 2007 N.C. App. LEXIS 2420 (2007).

Suspicion of Impairment Held Reasonable. —

Defendant's contention that the trial court should not have denied defendant's motion to suppress because the officer who stopped defendant's two-wheeled motorized vehicle did not have probable cause to make the stop had to be rejected; the officer was only required to have reasonable suspicion to stop defendant's vehicle because the officer did not stop defendant's vehicle based on the traffic violation of operating an unregistered vehicle, which would have required probable cause, but, instead, stopped the vehicle after observing defendant operate the vehicle in a manner that allowed the officer to reach the reasonable conclusion that defendant was driving the vehicle while defendant was impaired. State v. Jones, 186 N.C. App. 405, 651 S.E.2d 589, 2007 N.C. App. LEXIS 2200 (2007).

Investigatory stop of defendant's vehicle at around 12:15 a.m. in a high crime area of a town where a number of bars were located was constitutional under U.S. Const., Amend. IV and N.C. Const., Art. I, § 20 because, under the totality of the circumstances, defendant's 30-second delay before proceeding through a green traffic light gave rise to a reasonable, articulable suspicion that defendant may have been driving while impaired. State v. Barnard, 362 N.C. 244, 658 S.E.2d 643, 2008 N.C. LEXIS 338 (2008).

Warrantless Strip Search Proper. — Because a reasonable person would have understood from the circumstances and exchanges between the officers and defendant that police intended to conduct a strip search of defendant's person, and she consented to the strip search without withdrawing that consent at any time, the trial court properly denied her motion to suppress the evidence seized. State v. Neal, — N.C. App. —, 660 S.E.2d 586, 2008 N.C. App. LEXIS 835 (2008).

Warrantless Search Upheld. —

Supreme Court of North Carolina held that both the trial court and the Court of Appeals erred in suppressing evidence seized during a warrantless search of defendant's automobile some 20 hours after an officer, who knew defendant and was familiar with her vehicle, received information that the automobile contained several one-fourth ounce packages of marijuana; the search was not illegal, and the evidence seized should not have been suppressed. State v. Isleib, 319 N.C. 634, 356 S.E.2d 573 (1987).

Where an officer observed defendant drive over a curb, back away from the officer, and reach into a pocket in a location known for drug activity, defendant's motion to suppress was properly denied because the officer had reasonable suspicion to make an investigatory stop and had probable cause to seize a film canister from defendant's pocket during a pat-down for weapons based on, inter alia, defendant's actions, the area's reputation, and the officer's prior experiences. State v. Robinson, — N.C. App. —, 658 S.E.2d 501, 2008 N.C. App. LEXIS 648 (Apr. 1, 2008).

Warrantless Search Held Improper. —

Officer unreasonably detained the defendant after completing a traffic stop of the defendant's cousin, the driver of the car defendant was riding in, because the cousin's nervousness, in the context of the circumstances, did not rise to the level of reasonable suspicion necessary to justify further detention; among other things, the officer did not detect alcohol and found no contraband or weapons, and the fact that the rental car the defendant had rented was one day overdue did not raise the officer's suspicions. State v. Myles, — N.C. App. —, 654 S.E.2d 752, 2008 N.C. App. LEXIS 100 (2008).

Police lacked reasonable suspicion to perform an investigative stop because (1) the informant who told police that a silver car was driving erratically was not named or identified, (2) the deputies did not record the informant's telephone number or license tag number, (3) there was no indication that the informant had ever given any, much less reliable, information to police in the past, and (4) the police did not observe defendant's vehicle weaving or serving or corroborate the informant's information in any way. State v. Maready, — N.C. App. —, 654 S.E.2d 769, 2008 N.C. App. LEXIS 96 (2008).

Defendant was entitled to the suppression of evidence obtained from an investigatory stop and subsequent searches of defendant's jacket and car because the police officer who stopped defendant could supply no facts to support a reasonable suspicion that a crime was afoot when he stopped defendant; moreover, defendant's resistance and flight and flight from the officer was not be used as retroactive justification for the stop. State v. Hayes, — N.C. App. —, 655 S.E.2d 726, 2008 N.C. App. LEXIS 84 (2008).

Trial court erred by denying defendant's motion to suppress the drug and weapon contraband found in his hotel room as his Fourth Amendment rights were violated as a result of the police accompanying a hotel manager into his room and discovering the contraband when no exigent circumstances existed nor did defendant consent to the entry by the police. State v. McBennett, — N.C. App. —, 664 S.E.2d 51, 2008 N.C. App. LEXIS 1486 (Aug. 5, 2008).

Voluntary Consent. —

Because Miranda warnings were not required before defendant consented to a search of a vehicle, and because any error in admitting the fruits of the search was harmless, the trial court properly denied defendant's motion to suppress. State v. Cummings, — N.C. App. —, 656 S.E.2d 329, 2008 N.C. App. LEXIS 198 (2008).

III. SEARCH WARRANTS.

Anticipatory Warrant. —

Anticipatory search warrant, which provided that authority for the search contained in the warrant was not commenced until a confidential informant gave a prearranged signal that marijuana was seen at a residence, was valid because (1) the affidavit supporting the warrant was reliable and the information before a trial court was obtained in a reliable manner because the police were able to independently confirm a number of statements the informant made, and the trial court had information before it as to the informant's year-long history of purchasing drugs from defendant, as well as police officers' testimony that they considered the information reliable; (2) the warrant contained clear triggering events; (3) the triggering events were ascertainable and preordained; and (4) no search could have taken place until after those triggering events occurred. State v. Stallings, — N.C. App. —, 657 S.E.2d 915, 2008 N.C. App. LEXIS 531 (Mar. 18, 2008).

Affidavit Insufficient to Find Probable Cause. —

Evidence seized pursuant to a search warrant was properly suppressed because, inter alia, the affidavit supporting the search warrant merely stated that the confidential informant had visited the described location and made controlled purchases of cocaine at the location, without particularly stating which, if any, of the two dwellings the informant entered to make the purchases. In addition, the special agent had only been working in law enforcement for two years at the time the agent applied for the search warrant, and failed to include facts regarding whether the agent observed the transactions between the confidential informant and the seller, thereby failing to establish the identity of the seller as defendant. State v. Taylor, — N.C. App. —, 664 S.E.2d 421, 2008 N.C. App. LEXIS 1504 (2008).

Sec. 21. Inquiry into restraints on liberty.

CASE NOTES

Search and Seizure. — Where an officer observed defendant drive over a curb, back away from the officer, and reach into a pocket in a location known for drug activity, defendant's motion to suppress was properly denied because the officer had reasonable suspicion to make an investigatory stop and had probable cause to seize a film canister from defendant's pocket during a pat-down for weapons based on, inter alia, defendant's actions, the area's reputation, and the officer's prior experiences. State v. Robinson, — N.C. App. —, 658 S.E.2d 501, 2008 N.C. App. LEXIS 648 (Apr. 1, 2008).

Cited in State v. Gabriel, — N.C. App. —, 665 S.E.2d 581, 2008 N.C. App. LEXIS 1627 (2008).

Sec. 22. Modes of prosecution.

CASE NOTES

Process of indictment by grand jury pursuant to G.S. 15-144 adequately safeguards a defendant's rights under the Federal and North Carolina Constitu-

tions. State v. Seward, 362 N.C. 210, 657 S.E.2d 356, 2008 N.C. LEXIS 138 (2008).

Sec. 23. Rights of accused.

CASE NOTES

I. General Consideration.
III. Right of Confrontation.
  A. In General.
  B. Illustrative Cases.
IV. Right to Counsel.
  A. In General.
  B. When Right Applies.
  C. Appointment of Counsel for Indigents.

I. GENERAL CONSIDERATION.

Search and Seizure. — Where an officer observed defendant drive over a curb, back away from the officer, and reach into a pocket in a location known for drug activity, defendant's motion to suppress was properly denied because the officer had reasonable suspicion to make an investigatory stop and had probable cause to seize a film canister from defendant's pocket during a pat-down for weapons based on, inter alia, defendant's actions, the area's reputation, and the officer's prior experiences. State v. Robinson, — N.C. App. —, 658 S.E.2d 501, 2008 N.C. App. LEXIS 648 (Apr. 1, 2008).

Defendant's right to be present at every stage of the trial, etc.

Although defendant's constitutional right to be present at every stage of defendant's criminal trial was violated when the trial court refused to allow defense counsel to review jury questions, the violation of that right was harmless beyond a reasonable doubt; the record revealed that the questions indicated that the jury had already agreed unanimously on second-degree murder, which was defendant's ultimate conviction, and was confused about whether their rejection of first-degree murder had to be unanimous. State v. Smith, — N.C. App. —, 654 S.E.2d 730, 2008 N.C. App. LEXIS 92 (Jan. 15, 2008).

Defense Counsel Not Ineffective for Failing to Object Where Testimony Properly Admitted. —

Trial counsel's failure to object to the admission of testimony of a director of a rape crisis center about the general reactions and characteristics of sexual assault victims was not ineffective assistance of counsel as defendant failed to show that trial counsel's failure to object fell below a standard of reasonableness, or that the trial result would have been different absent the error. State v. Simmons, — N.C. App. —, 662 S.E.2d 559, 2008 N.C. App. LEXIS 1188 (July 1, 2008).

Applied in State v. Person, — N.C. App. —, 653 S.E.2d 560, 2007 N.C. App. LEXIS 2574 (2007); State v. Calhoun, — N.C. App. —, 657 S.E.2d 424, 2008 N.C. App. LEXIS 402 (2008).

Cited in State v. Robinson, — N.C. App. —, 653 S.E.2d 889, 2007 N.C. App. LEXIS 2556 (2007); State v. Whaley, 362 N.C. 156, 655 S.E.2d 388, 2008 N.C. LEXIS 31 (2008); State v. Wilson, — N.C. App. —, 665 S.E.2d 751, 2008 N.C. App. LEXIS 1615 (2008); State v. Gabriel, — N.C. App. —, 665 S.E.2d 581, 2008 N.C. App. LEXIS 1627 (2008).

III. RIGHT OF CONFRONTATION.

A. In General.

Waiver of Right. —

Defendant may waive the general right to be present at his trial by his voluntary and unexplained absence from court. State v. Davis, 186 N.C. App. 242, 650 S.E.2d 612, 2007 N.C. App. LEXIS 2109 (2007).

B. Illustrative Cases.

Analysis of Evidence by Expert. —

Admission of the results of laboratory tests performed by a non-testifying witness did not violate defendant's right to confrontation, under U.S. Const., Amends. VI and XIV or N.C. Const., Art. I, § 23 because defendant was able to cross-examine a witness qualified as an expert who relied on the test results in giving an expert opinion. State v. Thompson, — N.C. App. —, 654 S.E.2d 814, 2008 N.C. App. LEXIS 82 (2008).

Violation of Confrontation Clause Was Not Shown. —

Defendant did not show that law enforcement officers' statements identifying defendant by defendant's nickname constituted inadmissible hearsay and, thus, defendant did not show a prerequisite for a Confrontation Clause violation, namely, that hearsay was involved; the law enforcement officers' identification of defendant was not admitted for the truth of the matter asserted, but instead was admitted to show why their investigation focused on defendant in a case where defendant shot another person. State v. Tate, — N.C. App. —, 653 S.E.2d 892, 2007 N.C. App. LEXIS 2553 (2007).

Denial of Continuance Motion. —

Defendant's constitutional right to presence at trial was not violated by the denial of motions for continuance because defendant's absence from the second and third days of trial was only explained by contact with a defense witness, not defense counsel or the trial court, indicating that defendant was in the hospital with chest pains; a letter indicating that defendant had been in the hospital for observation did not offer a diagnosis or prognosis, and, thus, no medical emergency was shown, so defendant's absence could not be deemed involuntary. State v. Russell, — N.C. App. —, 655 S.E.2d 887, 2008 N.C. App. LEXIS 196 (Feb. 5, 2008).

IV. RIGHT TO COUNSEL.

A. In General.

Conflict of Interest. — Defendant's rights under the Sixth Amendment and N.C. Const., Art. I, §§ 19 and 23 were not violated by the denial of defense counsel's motion to withdraw since an inquiry was conducted into counsel's allegation that counsel had a conflict of interest under N.C. Rev. R. Prof. Conduct 1.7(a) because a former client was called as a witness against defendant; there was no conflict since: (1) counsel had represented the witness three years prior to defendant's trial and was no longer representing the witness; (2) counsel had no recollection as to specifics of the witness's case aside from the fact that the witness had been convicted; (3) counsel's statement that counsel would review counsel's file to see if counsel had any information to help defendant proved that counsel was committed to defendant's case; and (4) counsel made significant inroads to undermine the witness's credibility. State v. Thomas, — N.C. App. —, 651 S.E.2d 924, 2007 N.C. App. LEXIS 2309 (2007).

Ineffective Representation Not Shown. —

Counsel's failure to object to the mention of defendant's having taken a polygraph test did not constitute ineffective assistance of counsel in violation of N.C. Const., Art. I, § 23, because given the very slight nature of the evidence, defendant could not show that without them a different result would have been reached. State v. Carter, 186 N.C. App. 259, 650 S.E.2d 650, 2007 N.C. App. LEXIS 2089 (2007).

Defendant did not receive ineffective assistance of counsel, even though counsel did not request recordation under G.S. 15A-1241(b) of opening/closing arguments, jury selection, and rulings on matters of law, as defendant acknowledged that defendant could not show prejudice. State v. Thomas, — N.C. App. —, 651 S.E.2d 924, 2007 N.C. App. LEXIS 2309 (2007).

Defendant's counsel did not provide ineffective assistance of counsel by not renewing an objection to the admissibility of a statement that defendant made to the defendant's spouse regarding the killing of the victim; the statement did not involve a confidential communication pursuant to G.S. 8-57(c) because it was made within the hearing of a third person and, thus, the statement was admissible. State v. Kirby, — N.C. App. —, 653 S.E.2d 174, 2007 N.C. App. LEXIS 2450 (2007).

Defendant was not denied effective assistance of counsel when defendant's trial lawyer agreed to stipulate that defendant had a prior felony conviction, without insisting that the nature of the conviction not be disclosed to the jury, as defendant failed to prove that the prior conviction, possession of cocaine, equated with the charges of possession of a firearm by a felon and assault with a deadly weapon inflicting serious bodily injury such that the jury was likely to have believed that if defendant possessed cocaine in the past, defendant was likely to have committed the charged offenses. State v. Tice, — N.C. App. —, 664 S.E.2d 368, 2008 N.C. App. LEXIS 1507 (2008).

Defendant failed to meet the burden of establishing ineffective assistance of counsel by counsel failing to provide notice of defendant's intended defenses at trial because there was no reasonable probability that the alleged error of counsel affected the outcome of the trial as defendant failed to present substantial evidence of either voluntary intoxication or diminished capacity. State v. McDonald, — N.C. App. —, 663 S.E.2d 462, 2008 N.C. App. LEXIS 1496 (Aug. 5, 2008).

Counsel Not Ineffective for Failing to File Motion to Dismiss. —

Through the testimony of a middle school teacher that defendant, a juvenile, dragged her and struggled while the teacher was trying to prevent defendant from assaulting another student, the State had presented enough evidence for a charge of assault on a state employee in violation of G.S. 14-33(c)(4) to withstand a motion to dismiss. Thus, defense counsel was not ineffective for failing to renew the motion at the close of all of the evidence. In re A.V., — N.C. App. —, 654 S.E.2d 811, 2008 N.C. App. LEXIS 80 (2008).

Duty of Court to Determine If Defendant Has Waived Right to Counsel. —

Trial court did not make an adequate determination pursuant to G.S. 15A-1242 and N.C. Const., Art. I, § 23 that defendant's decision to proceed pro se was knowingly, intelligently, and voluntarily made because: (1) defendant did not show that defendant appreciated the consequences of proceeding without counsel, or that defendant understood that murder was punishable by death; (2) it was not sufficient that defendant agreed that defendant had been afforded excellent legal counsel, or that defendant claimed the decision was made without "haste" and was "something that (defendant had) thought about for quite some time"; and (3) that defendant's responses were clear and succinct and that defendant was calm and revealed no sign of confusion, reticence, or hesitation could not substitute for the required inquiry. State v. Moore, 362 N.C. 319, 661 S.E.2d 722, 2008 N.C. LEXIS 493 (2008).

B. When Right Applies.

In Connection With Right to Testify. — Defendant was improperly forced to choose between testifying in defendant's own behalf or being represented by counsel at trial; by choosing to testify, defendant was forced to relinquish defendant's constitutional right to the assistance of counsel under the Sixth Amendment and N.C. Const., Art. I, § 23. The error was not harmless under subsection (b) of G.S. 15A-1443 since the right to counsel was so basic to a fair trial that its infraction could never be treated as harmless error. State v. Colson, 186 N.C. App. 281, 650 S.E.2d 656, 2007 N.C. App. LEXIS 2084 (2007), review denied, 362 N.C. 89, 656 S.E.2d 280 (2007), State v. Colson, 186 N.C. App. 281, 650 S.E.2d 656, 2007 N.C. App. LEXIS 2084 (2007).

Jury Instructions. —

Although the trial court erred in refusing to allow defendant's counsel to examine the questions that the jury posed in defendant's murder trial, the circumstances did not completely deprive defendant of counsel; after the trial court received the questions, the trial court merely repeated the original jury instructions that it had given and did not give any new instructions. State v. Smith, — N.C. App. —, 654 S.E.2d 730, 2008 N.C. App. LEXIS 92 (Jan. 15, 2008).

C. Appointment of Counsel for Indigents.

Revocation of Waiver of Appointed Counsel. — Trial court did not err when the court allowed defendant to be represented by counsel because there was no evidence that the trial court expressly forced appointed counsel on defendant; after defendant voluntarily revoked his waiver of appointed counsel and informed the trial court that he would no longer represent himself but would be represented by his court-appointed attorney, the trial court ensured that representation by the court-appointed attorney was fully defendant's choice before the court appointed defense counsel. State v. Worrell, — N.C. App. —, 660 S.E.2d 183, 2008 N.C. App. LEXIS 855 (2008).

Sec. 24. Right of jury trial in criminal cases.

CASE NOTES

I. In General.
II. Unanimous Verdict of Twelve.
III. Selection of Jurors.

I. IN GENERAL.

Special Instruction to Jury Foreperson Violated Constitution. — Defendant's rights under N.C. Const., Art. I, § 24 were violated as a jury foreperson received more than one instruction that the remaining jurors did not receive after the foreperson was ejected by the remaining jurors due to concerns about the foreperson's impartiality; defendant was entitled to a consistently-instructed jury under the constitution. State v. Wilson, — N.C. App. —, 665 S.E.2d 751, 2008 N.C. App. LEXIS 1615 (2008).

Conversation Between Judge and Foreperson Unrecorded. — Defendant's claim that the trial court had unrecorded bench conversations with a jury foreperson in violation of N.C. Const., Art. I, § 24 was preserved for review, even without an objection at trial under N.C. R. App. P. 10(b)(1). State v. Wilson, — N.C. App. —, 665 S.E.2d 751, 2008 N.C. App. LEXIS 1615 (2008).

Cited in State v. Davis, — N.C. App. —, 664 S.E.2d 21, 2008 N.C. App. LEXIS 1508 (Aug. 5, 2008).

II. UNANIMOUS VERDICT OF TWELVE.

Determination of Ambiguity As to Verdict Unanimity. —

Jury instruction error rendered the jury verdict fatally ambiguous, depriving defendant of defendant's constitutional right to a unanimous verdict granted by N.C. Const., Art. I, § 24. State v. Haddock, — N.C. App. —, 664 S.E.2d 339, 2008 N.C. App. LEXIS 1483 (2008).

Trial judge correctly instructed jury, etc.

Trial court's disjunctive instruction on the charge of felony operation of a motor vehicle to elude arrest was not improper; while many of the enumerated aggravating factors are in fact separate crimes under various provisions of the general statutes, they are not separate offenses, but are merely alternate ways of enhancing the punishment for speeding to elude arrest from a misdemeanor to a class H felony. State v. Hazelwood, — N.C. App. —, 652 S.E.2d 63, 2007 N.C. App. LEXIS 2311 (2007).

No Violation of Right to Unanimous Verdict. —

Because the trial court did not give any disjunctive instruction and, in any event, the unanimity cases relied upon by defendant did not apply to a charge of conspiracy to traffic in cocaine, the trial court's instruction did not create a risk of a non-unanimous verdict. State v. Davis, — N.C. App. —, 656 S.E.2d 632, 2008 N.C. App. LEXIS 278 (2008).

Because the trial court determined that a juror, who had discussed the case with another juror in a bathroom attached to the juror room, had not been intimidated or received outside information and was in agreement with the verdict reached by the jury, and no conversations had occurred outside the jury room, at most, the record established that the two jurors may have discussed the case between themselves; thus, there was no violation of the unanimity requirement. State v. Jackson, — N.C. App. —, 659 S.E.2d 73, 2008 N.C. App. LEXIS 689 (2008).

III. SELECTION OF JURORS.

Right to Impartial Jury. — Trial court's conduct at a suppression hearing in asking a police officer an additional question regarding the officer's investigative stop of defendant in a case where defendant was charged with and pled guilty to habitual driving while impaired did not violate defendant's right to trial by a jury; the question did not show that the trial court was partial to the State's case, but, instead, showed that the trial court was trying to understand the "whole picture on what happened," even if the question was outside the scope of what was appropriate for such a hearing. State v. Jones, 186 N.C. App. 405, 651 S.E.2d 589, 2007 N.C. App. LEXIS 2200 (2007).

Sec. 32. Exclusive emoluments.

CASE NOTES

Manufacturing Incentives. — Taxpayers failed to state a claim for relief under the Public Purpose Doctrine, N.C. Const., Art. V, § 2(1) and (7), regarding their challenge to state and local incentives provided to the business to locate its computer manufacturing facility in the county since they did not show that a public purpose was not involved; likewise, they also failed to state a claim for relief under the Exclusive Emoluments clause, N.C. Const., Art. I, § 32, for the same reason, especially since the incentives further a proper public purpose of providing economic incentives to recruit business to the state to further the general welfare of the public. Blinson v. State, 186 N.C. App. 328, 651 S.E.2d 268, 2007 N.C. App. LEXIS 2191 (2007).

Sec. 35. Recurrence to fundamental principles.

CASE NOTES

Town Ordinance Barring Sex Offenders from Parks. — Woodfin, N.C., Ordinance § 130.03 was constitutional under the Fourteenth Amendment of the United States Constitution and N.C. Const., Art. I, §§ 19 and 35 as: (1) a sex offender's alleged liberty interest to enter a park owned by a town to have barbecues and enjoy nature was not protected by the right to intrastate travel; (2) an asserted liberty interest to freely roam in parks was not a fundamental right; (3) a town had been delegated the authority to prohibit acts detrimental to its citizens' health, safety, or welfare by G.S. 160A-174; (4) G.S. 14-208.5 recognized that sex offenders posed a high risk of engaging in sex offenses; and (5) Woodfin, N.C., Ordinance § 130.03 was rationally related to a legitimate government interest in protecting children and other visitors to parks owned and operated by the town from sexual attacks. Standley v. Town of Woodfin, 362 N.C. 328, 661 S.E.2d 728, 2008 N.C. LEXIS 496 (2008).

Cited in Petroleum Traders Corp. v. State, — N.C. App. —, 660 S.E.2d 662, 2008 N.C. App. LEXIS 1003 (2008).

ARTICLE II

LEGISLATIVE

Sec. 23. Revenue bills.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Applicability of This Section to Statutes Imposing a Tax. — Trial court erred in denying state agencies' motion to dismiss a corporation's complaint, seeking a declaratory judgment that an E-Procurement fee was a tax not enacted by the legislature in violation of N.C. Const., Art. II, § 23 and a refund of the taxes under G.S. 105-267 because the corporation's claims were barred by the defense of sovereign immunity; the North Carolina Supreme Court's holding that sovereign immunity could not prevent a plaintiff from asserting a claim alleging a violation of his rights under the Declaration of Rights of the North Carolina Constitution was limited to alleged violations of personal rights and did not extend to the corporation's complaint because N.C. Const., Art. II, § 23 did not articulate any rights, only procedures to be followed. Petroleum Traders Corp. v. State, — N.C. App. —, 660 S.E.2d 662, 2008 N.C. App. LEXIS 1003 (2008).

North Carolina State Lottery Act, G.S. 18C-101 et seq., was not a revenue bill and, thus, it did not have to be enacted according to the requirements set forth in N.C. Const., Art. II, § 23. The law was not a revenue bill because it was not enacted to (1) raise money on the credit of the State, (2) pledge the faith of the State directly or indirectly for the payment of any debt, or (3) impose any tax upon the people of the State, but, rather, involved a voluntary activity that incidentally raised revenue. Heatherly v. State, — N.C. App. —, 658 S.E.2d 11, 2008 N.C. App. LEXIS 530 (Mar. 18, 2008).

ARTICLE III

EXECUTIVE

Sec. 5. Duties of Governor.

CASE NOTES

Power to Prevent a Deficit. — Avoidance of a constitutionally prohibited budget deficit was clearly an important public purpose; however, the escrow of a state employer's contribution to state employees' pension funds was not reasonable and necessary to achieve that purpose. Stone v. State, — N.C. App. —, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (Aug. 5, 2008).

Sec. 11. Administrative departments.

CASE NOTES

Code of Judicial Conduct Not Applicable to Administrative Law Judges. — North Carolina Administrative Procedure Act, G.S. 150B-1 et seq., does not adopt the North Carolina Code of Judicial Conduct, which governs General Court of Justice of North Carolina proceedings and communications among the parties, because administrative agencies and departments exist pursuant to N.C. Const., Art. III, § 11, and as such are part of the Executive Branch of the State of North Carolina's government. Mission Hosps., Inc. v. N.C. HHS, — N.C. App. —, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

ARTICLE IV

JUDICIAL

Sec. 12. Jurisdiction of the General Court of Justice.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Applied in Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co., 362 N.C. 191, 657 S.E.2d 361, 2008 N.C. LEXIS 148 (2008).

Cited in Capps v. NW Sign Indus. of N.C., Inc., — N.C. App. —, 652 S.E.2d 372, 2007 N.C. App. LEXIS 2268 (2007); Selwyn Vill. Homeowners Ass'n v. Cline & Co., — N.C. App. —, 651 S.E.2d 909, 2007 N.C. App. LEXIS 2297 (2007).

ARTICLE V

FINANCE

Sec. 2. State and local taxation.

CASE NOTES

II. Power of Taxation.
III. Public Purposes.
    B. Illustrative Cases.

II. POWER OF TAXATION.

Prejudice Not Shown. — Taxpayers did not show that they had standing to challenge the economic incentives that the state and local governments gave to the business to locate its computer manufacturing facility in the county, under either the Uniformity of Taxation Clauses, N.C. Const., Art. V, § 2(2) and (3) or the federal Dormant Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, as the taxpayers did not show that they were prejudiced and the legislation producing the incentives, such as tax credits, promoted the permissible governmental goal of providing economic incentives to recruit business to the state in order to benefit the public. Blinson v. State, 186 N.C. App. 328, 651 S.E.2d 268, 2007 N.C. App. LEXIS 2191 (2007).

III. PUBLIC PURPOSES.

B. Illustrative Cases.

Manufacturing Incentives. — Taxpayers failed to state a claim for relief under the Public Purpose Doctrine, N.C. Const., Art. V, § 2(1) and (7), regarding their challenge to state and local incentives provided to the business to locate its computer manufacturing facility in the county since they did not show that a public purpose was not involved; likewise, they also failed to state a claim for relief under the Exclusive Emoluments clause, N.C. Const., Art. I, § 32, for the same reason, especially since the incentives further a proper public purpose of providing economic incentives to recruit business to the state to further the general welfare of the public. Blinson v. State, 186 N.C. App. 328, 651 S.E.2d 268, 2007 N.C. App. LEXIS 2191 (2007).

Sec. 6. Inviolability of sinking funds and retirement funds.

CASE NOTES

Definition of Divert. — Applying the plain meaning of the term divert contained in N.C. Const., Art. V, § 6(2), the prohibition against seizure of funds applied to and included funds appropriated and intended for the retirement system, but not yet deposited therein. State officials, by the terms of Executive Order No. 3, diverted assets of the retirement system and violated the constitutional provision. Stone v. State, — N.C. App. —, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (Aug. 5, 2008).

Actuarially Unsound Diversion of Funds. — Actuarially unsound diversion of funds threatened the integrity and security of a state employees' Retirement System. By diverting the funds, the state officials' actions impaired the contractual right of state employees to a retirement system funded in an actuarially sound manner and violated the employees' rights under the contract clause. Stone v. State, — N.C. App. —, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (Aug. 5, 2008).

Public Policy Favors Inviolability of Retirement Funds. — Retirement funds specifically receive special constitutional protection in North Carolina; N.C. Const., Art. V, § 6(2) plainly provides that the State may not use retirement funds for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds. This constitutional provision demonstrates the strong public policy of North Carolina in favor of the inviolability of retirement funds. Stone v. State, — N.C. App. —, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (Aug. 5, 2008).

Sec. 7. Drawing public money.

CASE NOTES

Cited in Heatherly v. State, — N.C. App. —, 658 S.E.2d 11, 2008 N.C. App. LEXIS 530 (Mar. 18, 2008).

ARTICLE IX

EDUCATION

Sec. 2. Uniform system of schools.

CASE NOTES

No Maximum Limitation on School Term. —

G.S. 115C-1, especially as a codification of N.C. Const., Art. IX, § 2(1), can be read as setting a floor for the quantum of education required. Any other construction of the statute would place G.S. 115C-1 in conflict with G.S. 115C-84.2(a)(1)'s requirement that a school calendar include a minimum of 180 days and 1,000 hours of instruction covering at least 9 calendar months. Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Counties May Be Directed to Provide Funds. —

Superior court had jurisdiction to adjudicate a budgetary dispute between a county board of education and a board of county commissioners because the board of county commissioners was required to provide funding to the board of education and upon disagreement as to sufficient funding the board of education was authorized pursuant to G.S. 115C-431(c), which was enacted pursuant to N.C. Const., Art. IX, § 2, to file an action against the board of county commissioners. Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, — N.C. App. —, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Sec. 5. Powers and duties of Board.

CASE NOTES

Applied in Wake Cares, Inc. v. Wake County Bd. of Educ., — N.C. App. —, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Sec. 7. County school fund; State fund for certain moneys.

CASE NOTES

Applied in Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, — N.C. App. —, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

TABLES OF LAWS CODIFIED SUBSEQUENT TO 1919

This table indicates the original codification of Session Laws in the General Statutes of North Carolina. This table does not reflect the repeal or renumbering of sections of the General Statutes since the original codification of a particular Session Law or section thereof.

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55	1(a)	143-135 L.M.
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62	1	40A-42 L.M.
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Sections Added, Amended or Repealed 2008 Session

This table lists the sections of the General Statutes of North Carolina which were added, amended or repealed during the 2008 legislative session of the General Assembly.

In instances where the effective date of an act has been postponed beyond January 1, 2009, the effective date of such act is indicated in the right-hand column.

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1-53	Amended	139	1	
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7A-101	Amended	107	26.5	
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7A-133	Amended	107	14.13	1/15/09
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7A-171.1	Amended	107	26.7	
7A-177	Amended	187	2	
7A-302	Amended	107	29.8	
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7A-305	Amended	107	29.8	
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7A-305	Amended	193	2	
7A-306	Amended	107	29.8	
7A-307	Amended	107	29.8	
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7A-474.3	Amended	107	14.9	
7A-474.4	Amended	194	3	
7A-474.17	Amended	194	3	
7A-474.19	Amended	194	3	
7A-498.6	Amended	107	26.4	
7A-498.6	Amended	107	26.4	
7A-498.8	Amended	187	3	
7A-796	Amended	187	4	
7B-3102	Amended	169	1	

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14-27.4A	Added	117	2	
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14-50.15	Added	214	3	
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14-50.18	Added	214	3	
14-50.19	Added	214	3	
14-50.20	Added	214	3	
14-50.21	Added	214	3	
14-50.22	Added	214	3	
14-50.23	Added	214	3	
14-50.24	Added	214	3	
14-50.25	Added	214	3	
14-50.26	Added	214	3	
14-50.27	Added	214	3	
14-50.28	Added	214	3	
14-50.29	Added	214	3	
14-50.30	Added	214	3	
14-71	Amended	187	34	
14-72.11	Amended	187	34	
14-83.1	Added	128	2	
14-86.6	Amended	187	34	
14-144	Amended	15	1	
14-190.13	Amended	218	1	
14-190.16	Amended	117	3	
14-190.16	Amended	218	2	
14-190.17A	Amended	117	5	
14-190.17A	Amended	218	4	
14-190.17	Amended	117	4	
14-190.17	Amended	218	3	
14-190.18	Amended	117	6	
14-202.3	Amended	218	5	
14-202.5A	Added	218	7	5/1/09
14-202.5	Added	218	6	
14-202.6	Added	218	8	
14-208.6A	Amended	117	7	
14-208.6	Amended	117	6.1	
14-208.6	Amended	220	1	5/1/09
14-208.7	Amended	117	8	
14-208.7	Amended	220	2	5/1/09
14-208.8	Amended	220	3	5/1/09
14-208.9A	Amended	117	10	
14-208.9A	Amended	220	6	5/1/09
14-208.9	Amended	117	9	
14-208.9	Amended	220	4	5/1/09
14-208.9	Amended	220	5	5/1/09
14-208.11	Amended	220	7	5/1/09
14-208.12A	Amended	117	11	
14-208.14	Amended	220	8	5/1/09

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14-208.15A	Added	220	9	5/1/09
14-208.18	Added	117	12	
14-208.19	Added	117	13	
14-208.27	Amended	117	14	
14-208.28	Amended	117	15	
14-208.29	Amended	117	12.2	
14-208.40A	Amended	117	16.1	
14-208.40B	Amended	117	16.2	
14-208.40	Amended	117	16	
14-208.41	Amended	117	17	
14-208.41	Amended	187	5	
14-208.43	Amended	117	18	
14-277.3A	Added	167	2	
14-277.3	Repealed	167	1	
14-298	Amended	122	2	
14-306.3	Added	122	1	
14-309	Amended	122	3	
14-318.2	Amended	191	1	
14-318.4	Amended	191	2	
14-344	Amended	158	3	
14-344.1	Added	158	1	
14-344.2	Added	158	2	
14-404	Amended	210	3	
14-415.12	Amended	210	3	
15A-145	Amended	187	35	
15A-533	Amended	214	4	
15A-831	Amended	4	1	
15A-1340.16A	Amended	214	5	
15A-1340.16	Amended	129	1	
15A-1340.16	Amended	129	2	
15A-1342	Amended	129	3	
15A-1344	Amended	129	4	
15A-1344	Amended	187	46	
15A-1345	Amended	117	19	
15A-1368.6	Amended	117	20	
15A-1369	Added	2	1	
15A-1369	Added	2	1	
15A-1369.1	Added	2	1	
15A-1369.2	Added	2	1	
15A-1369.3	Added	2	1	
15A-1369.4	Added	2	1	
15A-1369.5	Added	2	1	
15A-1371	Amended	133	1	
18B-902	Amended	187	6	
18B-903	Amended	187	7	
18B-1002	Amended	159	1	
18B-1006.1	Amended	187	35.5	
18C-173	Added	107	26.12A	
19A-24	Amended	198	2	
19A-62	Amended	187	8	
20-4.01	Amended	156	1	
20-7	Amended	202	2	
20-7	Amended	202	3	
20-7	Amended	217	1	
20-7	Amended	221	1	
20-17.1	Amended	182	1	
20-17.4	Amended	175	1	
20-19	Amended	187	9	
20-20.1	Amended	118	2.9	

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20-37.20A	Amended	175	2	
20-38.7	Amended	187	10	
20-52	Amended	124	4.1	
20-54	Amended	225	7	1/1/11
20-63	Amended	225	8	
20-66	Amended	190	1	
20-88	Amended	221	2	
20-115.1	Amended	160	1	
20-115.1	Amended	221	3	
20-115.1	Amended	221	4	
20-116	Amended	221	5	
20-116	Amended	221	6	
20-116	Amended	229	1	
20-118	Amended	221	7	
20-118	Amended	221	8	
20-118	Amended	221	9	
20-119	Amended	160	2	
20-119	Amended	229	2	
20-135.2B	Amended	216	1	
20-137.5	Added	178	1	
20-138.2A	Amended	187	36	
20-138.2B	Amended	187	36	
20-166	Amended	128	1	
20-171.21	Amended	187	11	
20-171.22	Amended	91	1	
20-171.24	Amended	99	1	
20-171.25	Added	156	2	
20-175	Amended	223	1	
20-179.3	Amended	187	36	
20-183.2	Amended	172	1	
20-183.4C	Amended	190	3	
20-183.4	Amended	190	2	
20-219.2	Amended	68	1	
20-279.21	Amended	124	1.1	
20-279.21	Amended	124	1.2	
20-305	Amended	156	3	
20-305	Amended	187	50	
20-356	Amended	89	1	
20-358	Amended	89	2	
20-363	Amended	89	3	
20-371	Amended	89	4	
20-374	Added	89	5	
24-1.1E	Amended	227	2	
24-1.1E	Amended	228	15	
24-1.1F	Amended	228	16	
32A-15	Amended	153	4	
32A-25.1	Amended	187	37	
35A-1251	Amended	87	1	
35A-1252	Amended	87	2	
42-14.3	Amended	107	28.27	
42-42	Amended	219	2	1/1/10
42-42	Amended	219	6	
42-43	Amended	219	3	1/1/10
42-44	Amended	219	4	1/1/10
45-21.16B	Added	228	18	
45-21.16	Amended	226	2	
45-21.16	Amended	226	3	
45-91	Amended	227	1	
45-91	Amended	228	19	

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45-94	Amended	228	20	
45-100	Added	226	1	
45-100	Added	226	1	
45-101	Added	226	1	
45-102	Added	226	1	
45-103	Added	226	1	
45-104	Added	226	1	
45-105	Added	226	1	
45-106	Added	226	1	
45-107	Added	226	1	
47C-3-122	Added	143	19	
47F-3-122	Added	143	19	
47-14	Amended	194	7	
47-30	Amended	225	9	
47-31	Amended	194	7	
47-36.1	Amended	194	7	
50B-4.1	Amended	93	1	
50-13.4	Amended	12	1	
53-243.01	Amended	228	1	
53-243.02	Amended	228	2	
53-243.05	Amended	228	3	
53-243.06	Amended	228	4	
53-243.08	Amended	228	5	
53-243.09	Amended	228	6	
53-243.10	Amended	228	7	
53-243.11	Amended	187	49.6	
53-243.11	Amended	227	3	
53-243.11	Amended	228	8	
53-243.12	Amended	228	9	
53-243.13	Amended	228	10	
53-243.14	Amended	228	11	
53-243.15	Amended	228	12	
53-243.16	Amended	228	13	
53-243.17	Amended	228	14	
55A-1-40	Amended	37	1	
55A-1-41	Amended	37	2	
55A-1-70	Added	37	3	
55A-1-70	Added	37	3	
55A-7-04	Amended	37	4	
55A-7-08	Amended	37	5	
55A-7-24	Amended	37	6	
55A-8-21	Amended	37	7	
58-3-191	Amended	124	10.1	
58-5-25	Amended	134	67	
58-5-50	Amended	124	2.1	
58-5-55	Amended	124	2.5	
58-5-71	Amended	124	2.4	
58-7-15	Amended	124	2.3	
58-7-75	Amended	124	2.6	
58-10-145	Amended	124	2.2	
58-21-65	Amended	124	10.2	
58-24-185	Amended	187	12	
58-28-5	Amended	124	3.1	
58-28-5	Amended	124	3.2	
58-28-10	Repealed	124	3.5	
58-28-12	Added	124	3.4	
58-28-13	Added	124	3.4	
58-28-14	Added	124	3.4	
58-28-40	Amended	124	3.3	

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58-33-125	Amended	107	29.10	
58-36-85	Amended	124	4.2	
58-50-61	Amended	124	5.1	
58-50-62	Amended	124	5.2	
58-50-175	Amended	118	3.2	
58-50-180	Amended	124	6.1	
58-50-180	Amended	124	6.2	
58-50-185	Amended	124	6.3	
58-50-195	Amended	124	6.4	
58-50-210	Amended	124	6.5	
58-50-225	Amended	118	3.2	
58-50-225	Amended	118	3.2	
58-50-235	Amended	118	3.2	
58-55-35	Amended	187	38	
58-67-50	Amended	124	5.3	
58-84-35	Amended	187	13	
58-85A-1	Amended	107	22.2	
58-86-55	Amended	107	26.25	
58-88-30	Amended	107	29.9	
58-89A-10	Repealed	124	7.3	
58-89A-50	Amended	124	7.1	
58-89A-50	Amended	124	7.2	
58-89A-105	Amended	124	7.4	
62A-44	Amended	134	1	
62A-46	Amended	134	1	
62A-46	Amended	134	1	
66-58	Amended	134	73	
66-58	Amended	192	12	
66-106	Amended	228	17	
66-352	Amended	148	5	
66-380	Added	124	9.1	
66-380	Added	124	9.1	
66-381	Added	124	9.1	
66-382	Added	124	9.1	
75-90	Amended	198	11.7	
75-90	Added	222	1	
75-104	Amended	124	10.3	
78A-31	Amended	107	29.3	
85B-3	Amended	138	1	
87-97	Amended	198	1	10/1/09
87-98	Amended	107	12.1	
89G	Added	177	1	
89G-1	Added	177	1	
89G-2	Added	177	1	
89G-3	Added	177	1	
89G-4	Added	177	1	
89G-5	Added	177	1	
89G-6	Added	177	1	
89G-7	Added	177	1	
89G-8	Added	177	1	
89G-9	Added	177	1	
89G-10	Amended	177	5	
89G-10	Added	177	1	
89G-11	Added	177	1	
89G-12	Added	177	1	
89G-13	Added	177	1	
90-18.5	Amended	187	14	
90-18.6	Added	107	10.4B	
90-21.13	Amended	187	37	

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90-21.20	Amended	179	1	
90-21.20	Amended	179	1	
90-113.31A	Amended	130	1	
90-113.32	Amended	130	2	
90-113.32	Amended	130	3	
90-113.40	Amended	130	4	
90-113.42	Amended	130	5	
90-113.43	Amended	130	6	
90-171.62	Amended	204	5.1	
90-171.101	Amended	204	5.2	
90-210.124	Amended	153	5	
90-210.129	Amended	153	6	
90-270.69	Amended	187	40	
90-270.73	Amended	187	40	
90-270.78	Amended	187	40	
90-285.1	Amended	187	41	
90-288.01	Added	183	1	
90-602	Amended	153	1	
90-621	Amended	224	1	
90-622	Amended	224	2	
90-623	Amended	224	3	
90-625	Amended	224	4	
90-626	Amended	224	6	
90-626	Amended	224	7	
90-628	Amended	224	8	
90-629	Amended	224	9	
90-629.1	Added	224	10	
90-630	Repealed	224	11	
90-630.1	Added	224	12	
90-631	Amended	224	13	
90-631	Amended	224	14	
90-631.1	Added	224	15	
90-631.2	Added	224	15	
90-631.3	Added	224	15	
90-632	Amended	224	16	
90-633	Amended	224	17	
90-634	Amended	224	18	
90-634.1	Amended	224	19	
93E-1-5	Amended	177	6	
95-241	Amended	212	1	
96-9	Amended	157	1	1/1/10
96-9	Amended	157	2	1/1/10
101-6	Amended	218	9	
105-32.2	Amended	107	28.17	
105-41	Amended	206	1	
105-113.39	Amended	207	4	
105-113.81A	Amended	107	13.6A	
105-113.112	Amended	134	68	
105-114	Amended	107	28.7	
105-114.1	Amended	107	28.7	
105-122	Amended	134	3	
105-122	Amended	134	3	
105-125	Amended	107	28.7	
105-129.2A	Amended	134	69	
105-129.16E	Amended	107	28.9A	
105-129.16G	Amended	134	2	
105-129.16H	Amended	107	28.25	
105-129.16H	Amended	134	70	
105-129.45	Amended	107	28.3	

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105-129.51	Amended	107	28.2	
105-129.70	Amended	107	28.4	
105-129.71	Amended	107	28.4	
105-129.72	Amended	107	28.4	
105-129.75	Amended	107	28.4	
105-130.5	Amended	107	28.1	
105-130.5	Amended	107	28.1	
105-130.5	Amended	107	28.1	
105-130.5	Amended	107	28.25	
105-130.5	Amended	107	28.27	
105-130.5	Amended	134	2	
105-130.16	Amended	134	4	
105-130.41	Amended	107	28.5	
105-130.41	Amended	107	28.5	
105-130.47	Amended	107	28.24	
105-134.6	Amended	107	28.1	
105-134.6	Amended	107	28.1	
105-134.6	Amended	107	28.1	
105-134.6	Amended	107	28.27	
105-134.6	Amended	134	2	
105-151.22	Amended	107	28.5	
105-151.22	Amended	107	28.5	
105-151.29	Amended	107	28.24	
105-151.31	Amended	107	28.9	
105-154	Amended	107	28.8	
105-163.9	Amended	187	15	
105-163.012	Amended	107	28.26	
105-164.3	Amended	107	28.12	
105-164.4B	Amended	187	42	
105-164.13B	Amended	107	28.19	
105-164.13D	Added	107	28.12	
105-164.13	Amended	107	28.6	
105-164.13	Amended	107	28.20	
105-164.14	Amended	107	28.22	
105-164.14	Amended	107	28.23	
105-164.14	Amended	107	28.23	
105-164.14	Amended	118	3.10	
105-164.14	Amended	154	1	
105-164.16	Amended	134	11	
105-164.44I	Amended	148	1	
105-164.44I	Amended	148	2	
105-164.44J	Added	148	3	
105-187.9	Amended	107	25.5	7/1/09
105-187.9	Amended	107	25.5	7/1/10
105-187.9	Amended	107	25.5	
105-187.51B	Amended	107	28.21	
105-187.62	Amended	207	1	
105-187.63	Amended	207	2	
105-188	Repealed	107	28.18	
105-188.1	Repealed	107	28.18	
105-189	Repealed	107	28.18	
105-190	Repealed	107	28.18	
105-193	Repealed	107	28.18	
105-194	Repealed	107	28.18	
105-195	Repealed	107	28.18	
105-197	Repealed	107	28.18	
105-197.1	Repealed	107	28.18	
105-228.5B	Amended	118	3.2	6/30/10
105-228.5B	Amended	118	3.2	

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105-228.90	Amended	107	28.1	
105-236	Amended	107	28.18	
105-237.1	Amended	107	28.16	
105-241.10	Amended	107	28.18	
105-241.11	Amended	134	5	
105-241.14	Amended	134	6	
105-241.18	Added	107	28.28	
105-241.19	Amended	107	28.28	
105-241.22	Amended	134	7	
105-242.2	Amended	134	10	
105-244.2	Added	107	28.16	
105-249.2	Amended	187	16	
105-251	Amended	134	71	
105-258.2	Amended	107	28.16	7/1/09
105-258.2	Added	107	28.16	
105-259	Amended	107	28.25	
105-259	Amended	144	4	8/2/08
105-263	Amended	107	28.18	
105-264	Amended	107	28.16	
105-264.1	Added	134	12	
105-273	Amended	35	1.1	
105-275	Amended	35	2.1	
105-275	Amended	107	28.11	7/1/09
105-275	Amended	134	72	
105-275	Amended	144	1	7/1/09
105-275	Amended	146	4.1	
105-275	Amended	146	5.1	
105-275	Amended	171	7	
105-275	Amended	171	7	
105-277.1B	Amended	35	1.2	
105-277.1C	Added	107	28.11	7/1/09
105-277.1F	Amended	107	28.11	
105-277.1F	Amended	171	2	7/1/10
105-277.1F	Added	35	2.2	
105-277.1	Amended	35	3	
105-277.1	Amended	107	28.11	7/1/09
105-277.1	Amended	107	28.11	7/1/09
105-277.1	Amended	107	28.11	7/1/09
105-277.1	Amended	107	28.11	7/1/09
105-277.1	Amended	107	28.11	
105-277.2	Amended	146	2.1	
105-277.3	Amended	146	2.2	
105-277.3	Amended	171	4	7/1/10
105-277.3	Amended	171	5	7/1/10
105-277.4	Amended	35	2.3	
105-277.14	Amended	35	2.4	
105-277.15	Added	171	1	7/1/10
105-277.16	Amended	187	47.6	
105-277.16	Added	146	3.1	7/1/09
105-278	Amended	35	2.5	
105-278.6	Amended	35	2.6	
105-282.1	Amended	35	1.3	
105-282.1	Amended	107	28.11	7/1/09
105-282.1	Amended	171	3	7/1/10
105-282.1	Amended	171	7	
105-286	Amended	146	1.1	7/1/09
105-287	Amended	146	1.2	7/1/09
105-330	Amended	134	65	
105-330.2	Amended	134	61	

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105-330.2	Amended	134	65	
105-330.3	Amended	134	62	
105-330.4	Amended	134	65	
105-330.5	Amended	134	65	
105-330.7	Amended	134	65	
105-330.10	Amended	134	63	
105-330.10	Amended	134	66	
105-330.11	Added	134	64	
105-360	Amended	35	2.7	
105-365.1	Added	35	2.8	
105-449.37	Amended	134	16	
105-449.38	Amended	134	17	
105-449.44	Amended	134	18	
105-449.47A	Amended	134	20	
105-449.47	Amended	134	19	
105-449.50	Repealed	134	21	
105-449.51	Amended	134	22	
105-449.52	Amended	134	8	
105-449.52	Amended	134	23	
105-449.60	Amended	134	24	
105-449.65	Amended	134	25	
105-449.66	Amended	134	26	
105-449.68	Amended	134	27	
105-449.69	Amended	134	28	
105-449.70	Amended	134	29	
105-449.74	Amended	134	30	
105-449.75	Amended	134	31	
105-449.81	Amended	134	32	
105-449.82	Amended	134	33	
105-449.83A	Amended	134	34	
105-449.84A	Amended	134	35	
105-449.85	Amended	134	36	
105-449.86	Amended	134	37	
105-449.87	Amended	134	38	
105-449.89	Amended	134	39	
105-449.91	Amended	134	40	
105-449.96	Amended	134	41	
105-449.97	Amended	134	42	
105-449.100	Amended	134	43	
105-449.101	Amended	134	44	
105-449.102	Amended	134	45	
105-449.105A	Amended	134	47	
105-449.105A	Amended	134	48	
105-449.105	Amended	134	46	
105-449.108	Amended	134	49	
105-449.115	Amended	134	50	
105-449.117	Amended	134	51	
105-449.121	Amended	134	52	
105-449.130	Amended	134	53	
105-449.131	Amended	134	54	
105-449.133	Amended	134	55	
105-449.137	Amended	134	56	
105-449.138	Amended	134	57	
105-449.139	Amended	134	58	
105-467	Amended	107	28.12	
105-472	Amended	134	14	
105-502	Amended	134	13	10/1/09
105-522	Amended	134	14	
105-522	Amended	134	15	

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105-522	Amended	134	15	10/1/09
105-522	Amended	134	15	
105-523	Amended	134	15	
105-523	Amended	134	15	
105-523	Amended	134	15	10/1/09
105-523	Amended	134	15	
105-538	Amended	134	75	
106-24	Amended	143	2	
106-284.33	Amended	88	3	
108A-25.2	Amended	187	17	
108A-53	Amended	187	18	
108A-54	Amended	107	10.10	
108A-70.18	Amended	107	10.13	
108A-70.20	Amended	107	10.13	
108A-70.21	Amended	107	10.12	
108A-70.21	Amended	107	10.12	
108A-70.21	Amended	107	10.13	
108A-70.21	Amended	107	10.13	7/1/09
108A-70.21	Amended	118	1.6	
108A-70.22	Repealed	107	10.13	
108A-70.23	Amended	107	10.13	
108A-70.24	Repealed	107	10.13	
113A-70	Added	198	8	4/1/09
113A-70	Added	198	8	4/1/09
113A-71	Amended	198	8	
113A-71	Amended	198	8	
113A-71	Added	198	8	4/1/09
113A-253.2	Added	107	12.9	
113-174.5	Added	141	1	
113-291.4	Amended	102	3	
113-296	Amended	205	2	
113-300.5	Added	120	1	
113-300.5	Added	120	1	
113-300.6	Added	120	1	
113-300.7	Added	120	1	
113-300.8	Added	120	1	
114-15	Amended	213	88	
114-19.11B	Added	224	20	
114-19.24	Added	202	1	
114-19.25	Added	183	2	
115B	Amended	135	1	
115B-2.1	Added	135	2	
115C-106.3	Amended	90	1	
115C-107.7	Amended	90	2	
115C-107.7	Amended	90	3	
115C-264.3	Amended	107	7.25	
115C-284	Amended	187	43	
115C-296.2	Amended	86	1	
115C-302.1	Amended	107	26.21	
115C-302.1	Amended	187	45.5	
115C-302.1	Amended	209	1	7/1/09
115C-302.1	Amended	209	2	
115C-321	Amended	194	11	
115C-332.1	Added	117	21	
115C-366	Amended	185	2	
115C-366	Amended	187	19	
115C-391	Amended	117	12.1	
115C-407.5	Added	185	1	
115C-407.5	Added	185	1	

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115C-407.6	Added	185	1	
115C-407.7	Added	185	1	
115C-407.8	Added	185	1	
115C-546.2	Amended	107	7.18	
115C-546.2	Amended	107	7.18	
115D-5	Amended	107	8.11	
115D-5	Amended	107	8.17	
115D-5	Amended	107	8.18	
115D-5.1	Amended	107	8.7	
115D-20	Amended	203	2	
115D-20.1	Amended	95	3	
115D-20.1	Added	95	2	
115D-29	Amended	194	11	
116D-5	Amended	84	1	
116D-5	Amended	84	2	
116-2	Amended	192	1	
116-4	Amended	192	2	
116-5	Amended	192	3	
116-5	Amended	192	12	
116-11	Amended	107	9.8	
116-11	Amended	204	4.1	
116-12	Amended	192	4	
116-21.2	Amended	107	9.11	
116-29.5	Added	107	27.7B	
116-30.7	Added	107	9.15	
116-31	Amended	192	5	
116-41.13A	Amended	192	6	
116-63	Amended	192	12	
116-64	Amended	192	7	
116-65	Amended	192	8	
116-74.43	Amended	204	5.3	
116-209.19	Amended	192	9	
116-209.26	Amended	107	9.2	
116-209.26	Amended	107	9.2	
116-209.36	Repealed	107	9.1	
116-271	Added	204	4.2	
116-271	Added	204	4.2	
116-272	Added	204	4.2	
116-273	Added	204	4.2	
116-274	Added	204	4.2	
116-275	Added	204	4.2	
119-15	Amended	134	59	
119-18	Amended	134	60	
120C-100	Amended	213	4	
120C-100	Amended	213	5	
120C-100	Amended	213	6	
120C-100	Amended	213	7	
120C-100	Amended	213	8	
120C-100	Amended	213	90	
120C-101	Amended	213	9	
120C-102	Amended	213	2	
120C-103	Amended	213	11	
120C-104	Amended	213	12	
120C-200	Amended	213	13	
120C-200	Amended	213	90	
120C-206	Amended	213	90	
120C-207	Amended	213	90	
120C-220	Amended	213	15	
120C-300	Amended	213	16	

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120C-301	Amended	213	90	
120C-303	Amended	213	17	
120C-303	Amended	213	18	
120C-303	Amended	213	19	
120C-303	Amended	213	90	
120C-304	Amended	213	20	
120C-304	Amended	213	21	
120C-305	Amended	213	22	
120C-400	Amended	213	23	
120C-400	Amended	213	90	
120C-401	Amended	213	24	
120C-401	Amended	213	25	
120C-401	Amended	213	90	
120C-402	Amended	213	27	
120C-402	Amended	213	90	
120C-403	Amended	213	29	
120C-403	Amended	213	90	
120C-500	Amended	213	30	
120C-500	Amended	213	31	
120C-500	Amended	213	32	
120C-501	Amended	213	33	
120C-600	Amended	213	34	
120C-601	Amended	213	35	
120C-603	Amended	213	36	
120C-800	Amended	213	37	
120C-800	Amended	213	38	
120C-800	Amended	213	39	
120-4.22A	Amended	107	26.23	
120-19.4A	Amended	213	89	
120-32.2	Amended	145	1	
120-32.3	Amended	145	2	
120-36.12	Amended	196	2	
120-36.13	Amended	196	1	
120-37	Amended	107	26.8	
120-37	Amended	107	26.9	
120-70.140	Added	150	1	
120-70.140	Added	150	1	
120-70.141	Added	150	1	
120-70.142	Added	150	1	
120-70.143	Added	150	1	
120-103.1	Amended	187	20	
120-103.1	Amended	213	1	
120-103.1	Amended	213	3	
120-104	Amended	213	2	
120-123	Amended	134	73	
120-131.1	Amended	196	1	
121-7.5	Added	107	19A.1	
121-38	Amended	165	1	
122A-3	Amended	107	21.1	
122A-5	Amended	194	1	
122A-5.4	Amended	107	21.1	
122A-5.14	Added	107	21.1	
122A-8.1	Repealed	194	1	
122C-3	Amended	107	10.15	
122C-31	Amended	131	1	
122C-54	Amended	210	1	
122C-54.1	Added	210	2	
122C-81	Added	107	10.15A	
122C-115.4	Amended	107	10.15	

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122C-124.1	Amended	107	10.15	
122C-142.1	Amended	130	7	
122C-142.1	Amended	130	8	
122C-151.4	Amended	107	10.15A	
122C-430	Amended	187	30	
126-5	Amended	134	73	
126-22	Amended	194	11	
126-85	Amended	196	2	
126-85	Amended	215	8	
127A-19	Amended	162	3	
127A-192	Amended	94	2	
127A-193	Amended	94	3	
127A-194	Amended	94	4	
127A-195	Amended	94	1	
130A-16	Added	119	1	1/1/10
130A-50	Amended	187	33	
130A-125	Amended	107	29.4	
130A-279	Amended	88	2	
130A-309.06	Amended	136	2	7/1/09
130A-309.09A	Amended	136	3	7/1/09
130A-309.09A	Amended	198	11.4	
130A-309.09A	Amended	208	2	
130A-309.09A	Amended	208	7	
130A-309.10	Amended	198	11.4	
130A-309.10	Amended	208	3	1/1/11
130A-309.10	Amended	208	4	1/1/11
130A-309.10	Amended	208	7	
130A-309.90	Amended	198	11.4	
130A-309.90	Amended	208	1	
130A-309.90	Amended	208	1	
130A-309.90	Amended	208	7	
130A-309.91	Amended	198	11.3	
130A-309.91	Amended	198	11.4	
130A-309.91	Amended	208	1	
130A-309.91	Amended	208	7	
130A-309.92	Amended	198	11.4	
130A-309.92	Amended	208	1	
130A-309.92	Amended	208	7	
130A-309.93A	Amended	198	11.4	
130A-309.93A	Amended	208	7	
130A-309.93A	Added	208	1	
130A-309.93B	Amended	198	11.4	
130A-309.93B	Amended	208	7	
130A-309.93B	Added	208	1	
130A-309.93	Amended	198	11.4	
130A-309.93	Amended	208	1	
130A-309.93	Amended	208	7	
130A-309.94	Amended	198	11.4	
130A-309.94	Amended	208	1	
130A-309.95	Amended	198	11.4	
130A-309.95	Amended	208	1	
130A-309.95	Amended	208	7	
130A-309.96	Amended	198	11.4	
130A-309.96	Amended	208	1	
130A-309.96	Amended	208	7	
130A-309.97	Amended	198	11.4	
130A-309.97	Amended	208	7	
130A-309.98	Amended	198	11.4	
130A-309.98	Amended	208	1	

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130A-309.98	Amended	208	7	
130A-309.99	Added	208	1	
130A-309.111	Added	136	1	7/1/09
130A-309.111	Added	136	1	7/1/09
130A-309.112	Added	136	1	7/1/09
130A-309.113	Added	136	1	7/1/09
130A-309.114	Added	136	1	7/1/09
130A-309.115	Added	136	1	7/1/09
130A-309.116	Added	136	1	7/1/09
130A-309.117	Added	136	1	7/1/09
130A-309.118	Added	136	1	7/1/09
130A-310.2	Amended	107	12.1A	
130A-315	Amended	140	1	
130A-329	Added	143	12	
130A-335	Amended	143	13	
130A-383	Amended	131	2	
130A-391	Repealed	153	3	
130A-412.14	Amended	153	2	
130A-412.31	Amended	153	9	
130A-415	Amended	153	7	
130A-420	Amended	153	8	
130A-450	Amended	107	29.6	
130A-491	Amended	149	1	
130A-492	Amended	149	2	
130A-493	Amended	149	3	
130A-498	Amended	95	1	
130A-498	Amended	149	4	
131D-2	Amended	166	1	1/1/10
131E-136	Amended	127	1	1/1/10
131E-138	Amended	127	2	
131E-214.1	Amended	119	2	1/1/10
131E-231	Amended	187	38	
131E-267	Amended	107	29.5	
132-1.12	Added	126	1	
135-5	Amended	107	26.23	
135-27	Amended	194	6	
135-40	Repealed	168	3	
135-40.1	Repealed	168	3	
135-40.6A	Repealed	168	3	
135-43	Amended	107	10.13	
135-43	Amended	168	1	
135-43	Added	168	1	
135-43.1	Amended	168	1	
135-43.2	Amended	187	49	
135-43.2	Added	168	2.1	
135-43.3	Amended	168	2	
135-43.4	Amended	168	1	
135-43.5	Amended	168	2	
135-43.6	Amended	168	2	
135-43.7	Amended	168	2	
135-44	Amended	168	2	
135-44	Added	168	2	
135-44.1	Amended	168	2	
135-44.2	Amended	168	2	
135-44.2	Amended	168	2.2	
135-44.3	Amended	168	2	
135-44.4	Amended	107	10.13	
135-44.4	Amended	168	2	
135-44.4	Amended	168	2	

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135-44.5	Amended	107	10.13	
135-44.5	Amended	168	2	
135-44.6	Amended	107	10.13	
135-44.6	Amended	168	2	
135-44.7	Amended	168	2	
135-44.8	Amended	168	2	
135-45	Added	168	3	
135-45.1	Added	168	3	
135-45.2	Amended	168	3	
135-45.2	Amended	194	6	
135-45.3	Added	168	3	
135-45.4	Amended	168	3	
135-45.5	Amended	168	3	
135-45.6	Amended	168	3	
135-45.7	Added	168	3	
135-45.8	Amended	168	3	
135-45.9	Amended	168	3	
135-45.10	Amended	168	3	
135-45.11	Added	168	3	
135-45.12	Amended	168	3	
135-45.12	Amended	187	49.5	
135-45.13	Amended	168	3	
135-45.14	Amended	168	3	
135-45.15	Amended	168	3	
135-45.16	Amended	168	3	
135-46	Amended	168	4	
135-46	Amended	168	4	
135-46	Added	168	4	
135-46.1	Amended	168	4	
135-46.1	Amended	168	4	
135-46.2	Amended	168	4	
135-46.3	Amended	168	4	
135-47	Amended	107	10.13	
135-47	Amended	168	4	
135-47	Added	168	4	
135-47	Repealed	107	10.13	7/1/10
135-47.1	Amended	168	4	
135-47.2	Added	107	10.13	
135-47.3	Added	107	10.13	
135-50	Amended	107	26.24	
135-51	Amended	107	26.24	
135-53	Amended	107	26.24	
135-54	Amended	107	26.24	
135-55	Amended	107	26.24	
135-56	Amended	107	26.24	
135-58	Amended	107	26.24	
135-58	Amended	107	26.24	
135-65	Amended	107	26.23	
135-91	Amended	132	1	7/1/09
135-96	Added	132	2	7/1/09
136-18	Amended	164	1	
136-18	Amended	180	2	
136-18	Amended	180	8	
136-28.6	Amended	164	2	
136-44.50	Amended	180	3	
136-44.53	Amended	180	5	
136-44.53	Amended	187	47.7	
136-66.3	Amended	180	6	
136-89.180	Added	225	1	

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136-89.181	Amended	225	3	
136-89.183A	Amended	225	11	
136-89.183	Amended	225	4	
136-89.187	Amended	225	5	
136-89.194	Amended	225	6	
136-89.210	Added	225	2	
136-89.210	Added	225	2	
136-89.211	Added	225	2	
136-89.212	Added	225	2	
136-89.213	Added	225	2	
136-89.214	Added	225	2	
136-89.215	Added	225	2	
136-89.216	Added	225	2	
136-89.217	Added	225	2	
136-89.218	Added	225	2	
136-93.1	Added	176	1	
136-98	Amended	180	7	
136-123	Amended	198	4	
136-176	Amended	107	25.1	
136-176	Amended	107	25.5	7/1/09
136-176	Amended	107	25.5	7/1/10
136-176	Amended	107	25.5	
136-176	Amended	107	25.15	
138A-3	Amended	187	44	
138A-3	Amended	213	40	
138A-3	Amended	213	41	
138A-3	Amended	213	42	
138A-3	Amended	213	43	
138A-3	Amended	213	44	
138A-3	Amended	213	45	
138A-3	Amended	213	46	
138A-3	Amended	213	47	
138A-3	Amended	213	48	
138A-3	Amended	213	49	
138A-3	Amended	213	50	
138A-3	Amended	213	51	
138A-3	Amended	213	52	
138A-3	Amended	213	53	
138A-3	Amended	213	54	
138A-3	Amended	213	84	
138A-10	Amended	213	55	
138A-10	Amended	215	7	
138A-11	Amended	213	56	
138A-12	Amended	187	21	
138A-12	Amended	213	1	
138A-12	Amended	213	57	
138A-12	Amended	215	4	
138A-12	Amended	215	5	
138A-13	Amended	213	2	
138A-13	Amended	213	91.5	
138A-13	Amended	215	6	
138A-14	Amended	213	59	
138A-14	Amended	213	60	
138A-15	Amended	213	61	
138A-15	Amended	213	62	
138A-21	Amended	213	63	
138A-22	Amended	213	64	
138A-23	Amended	213	65	
138A-23	Amended	213	66	

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		Chapter	*Section*	
138A-24	Amended	187	32	
138A-24	Amended	213	67	
138A-24	Amended	213	68	
138A-24	Amended	213	69	
138A-24	Amended	213	70	
138A-24	Amended	213	71	
138A-24	Amended	213	72	
138A-24	Amended	213	73	
138A-24	Amended	213	74	
138A-24	Amended	213	74.5	
138A-24	Amended	213	91	
138A-25	Amended	213	75	
138A-32	Amended	213	77	
138A-32	Amended	213	78	
138A-32	Amended	213	79	
138A-32	Amended	213	80	
138A-32	Amended	213	80.5	
138A-32	Amended	213	81	
138A-32	Amended	213	82	
138A-32	Amended	213	90	
138A-34	Amended	213	83	
138A-36	Amended	213	84	
138A-37	Amended	213	84	
138A-38	Amended	213	85	
140-5.13	Amended	194	6	
142-94	Amended	204	3	
143A-44.1	Amended	187	24	
143B-135	Added	107	19A.2	
143B-135	Added	107	19A.2	
143B-139.5B	Amended	187	25	
143B-152.4	Amended	107	16.2	
143B-168.15	Amended	123	2	
143B-179.5A	Repealed	85	1	
143B-266	Amended	199	2	
143B-273.15A	Added	107	17.7	
143B-273.15	Amended	107	17.7	
143B-279.12	Amended	198	10.1	
143B-279.13	Amended	198	10.2	
143B-279.15	Added	198	10.3	
143B-350	Amended	180	1	
143B-394.21	Added	107	19.1	
143B-394.21	Added	107	19.1	
143B-426.24	Amended	132	3	7/1/09
143B-437.08	Amended	147	1	
143B-437.11	Amended	187	26	
143B-437.012	Amended	187	26	
143B-437.20	Repealed	134	73	
143B-437.21	Repealed	134	73	
143B-437.22	Repealed	134	73	
143B-437.23	Repealed	134	73	
143B-437.26	Repealed	134	73	
143B-437.27	Repealed	134	73	
143B-437.28	Repealed	134	73	
143B-437.29	Repealed	134	73	
143B-437.30	Repealed	134	73	
143B-437.31	Repealed	134	73	
143B-437.32	Repealed	134	73	
143B-437.33	Repealed	134	73	
143B-437.45	Amended	134	73	

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143B-437.100	Added	188	1	7/1/10
143B-437.100	Added	188	1	7/1/10
143B-437.101	Added	188	1	7/1/10
143B-476	Amended	142	1	
143B-479	Amended	56	7	
143B-479	Amended	187	44.5	
143B-480.2	Amended	107	18.2	
143B-480.2	Amended	118	2.5	
143B-480.3	Amended	107	18.2	
143B-499.8	Amended	83	1	
143B-515	Amended	118	3.12	
143B-516	Amended	118	3.12	
143B-519	Repealed	107	14.8	
143B-543	Amended	56	2	
143B-549	Amended	56	3	
143B-556	Repealed	118	3.12	
143B-557	Amended	56	4	
143B-557	Amended	187	44.5	
143B-557	Repealed	118	3.12	
143D-8	Amended	187	27	
143-64.12	Amended	198	11.1	
143-135.27	Amended	195	11	
143-135.35	Added	203	1	
143-135.35	Added	203	1	
143-135.36	Added	203	1	
143-135.37	Added	203	1	
143-135.38	Added	203	1	
143-135.39	Added	203	1	
143-135.40	Added	203	1	
143-138	Amended	176	2	
143-138	Amended	219	1	
143-151.13	Amended	124	8.1	
143-151.16	Amended	124	8.2	
143-166.2	Amended	163	1	
143-214.7	Amended	198	8	
143-214.11	Amended	152	1	
143-215.3A	Amended	198	11.2	
143-215.22H	Amended	143	1	
143-215.22H	Amended	198	11.6	
143-215.22L	Amended	125	1	
143-215.22L	Amended	198	11.5	
143-215.56A	Added	107	29.7	
143-215.94B	Amended	195	11	
143-215.94B	Amended	198	7	
143-215.94C	Amended	195	1	
143-215.94C	Amended	198	7	
143-215.94D	Amended	195	11	
143-215.94E	Amended	195	2	
143-215.94G	Amended	195	3	
143-215.94G	Amended	195	11	
143-215.94H	Amended	195	4	
143-215.94I	Amended	195	10	
143-215.94L	Amended	195	9	
143-215.94T	Amended	195	5	
143-215.94U	Amended	195	6	
143-260.10	Amended	11	1	
143-299.1A	Amended	187	47	
143-299.1A	Added	170	1	
143-336	Amended	195	11	

TALBLE OF SECTIONS ADDED, AMENDED OR REPEALED

G.S. §	Effect	Session Laws Chapter	Session Laws Section	Postponed Effective Date
143-350	Amended	143	3	
143-354	Amended	143	4	
143-355	Amended	143	7	
143-355.1	Amended	143	16	
143-355.2	Added	143	5	
143-355.3	Added	143	8	
143-355.4	Added	143	9	7/1/09
143-355.5	Added	143	10	
143-355.6	Added	143	11	
143-433.6	Amended	204	6.1	
143-433.8	Amended	204	6.2	
143-433.9	Amended	204	6.3	
143-652.2	Amended	187	22	
143-722	Amended	187	23	
146-23.2	Added	203	3	
146-65	Amended	225	10	
147-11	Amended	107	26.1	
147-33.104	Amended	198	11.4	
147-33.104	Amended	208	5	1/1/11
147-33.104	Amended	208	7	
147-54	Amended	192	10	
147-64.6B	Added	215	1	
147-64.6	Amended	215	1	
147-64.6	Amended	215	2	
147-64.6	Amended	215	3	
147-69.2	Amended	13	2	
147-69.2	Amended	107	12.9	
147-69.2	Amended	107	12.9	
147-69.2	Amended	107	12.13	
147-69.3	Amended	132	5	
147-69.6	Added	13	3	
147-86.30	Amended	187	28	
148-4.1	Amended	199	1	
148-64.1	Added	199	3	
148-65.4	Amended	189	1	
148-65.4	Amended	189	1	
148-65.5	Amended	189	1	
148-65.6	Amended	189	1	
148-65.7	Amended	189	1	
148-65.8	Amended	189	1	
148-65.9	Amended	189	1	
148-84	Amended	173	1	
148-84	Amended	173	2	
150B-1	Amended	107	10.15A	
150B-1	Amended	168	5	
150B-1	Amended	187	26	
150B-31.1	Amended	134	9	
150B-44	Amended	168	5	
153A-98	Amended	194	11	
153A-148.1	Amended	35	1.4	
153A-150	Amended	146	1.3	7/1/09
153A-155	Amended	33	2	
153A-155	Amended	134	12	
153A-155	Amended	187	31	
153A-156.1	Added	144	2	
153A-210.1	Added	165	2	
153A-210.1	Added	165	2	
153A-210.2	Amended	187	47.5	
153A-210.2	Added	165	2	

G.S.		*Session Laws*		*Postponed Effective*
§	*Effect*	*Chapter*	*Section*	*Date*
153A-210.3	Added	165	2	
153A-210.4	Added	165	2	
153A-210.5	Added	165	2	
153A-210.6	Added	165	2	
153A-221	Amended	194	10	
153A-301	Amended	134	76	
153A-304.1	Amended	134	76	
153A-304.4	Added	134	76	
153A-357	Amended	198	8	4/1/09
158-12.1	Amended	134	77	
159B-44	Amended	38	1	
159G-23	Amended	143	15	7/31/08
160A-58.1	Amended	24	1	
160A-58.1	Amended	30	1	
160A-168	Amended	194	11	
160A-200	Amended	6	1	6/23/08
160A-200	Amended	25	1	
160A-208.1	Amended	35	1.5	
160A-215	Amended	64	2	7/8/08
160A-215	Amended	134	12	
160A-215.2	Added	144	3	8/2/08
160A-239.1	Added	165	3	
160A-239.1	Added	165	3	
160A-239.2	Amended	187	47.5	
160A-239.2	Added	165	3	
160A-239.3	Added	165	3	
160A-239.4	Added	165	3	
160A-239.5	Added	165	3	
160A-239.6	Added	165	3	
160A-295	Added	151	1	
160A-295	Added	151	1	
160A-295.1	Added	151	1	
160A-295.2	Added	151	1	
160A-295.3	Added	151	1	
160A-300.5	Amended	71	1	
160A-383.4	Added	22	1	
160A-417	Amended	198	8	4/1/09
160A-425.1	Amended	59	1	
160A-432	Amended	59	2	
161-10	Amended	107	29.7	
161-11.4	Added	107	29.7	
161-21	Amended	194	7	
161-22	Amended	194	7	
163-33.1	Amended	187	33	
163-45	Amended	187	33	
163-55	Amended	150	5	
163-59	Amended	187	33	
163-82.4	Amended	187	33	
163-82.6	Amended	150	5	
163-82.6	Amended	150	5	
163-82.10	Amended	187	33	
163-82.12	Amended	187	33	
163-82.14	Amended	187	33	
163-86	Amended	150	5	
163-98	Amended	150	10.1	
163-122	Amended	187	33	
163-123	Amended	187	33	
163-132.1B	Amended	187	33	
163-132.3	Amended	187	33	

TALBLE OF SECTIONS ADDED, AMENDED OR REPEALED

G.S. *§*	*Effect*	*Session Laws* *Chapter*	 *Section*	*Postponed Effective Date*
163-132.5F	Amended	187	33	
163-132.5G	Amended	187	33	
163-165.3	Amended	187	33	
163-165.5B	Amended	187	33	
163-165.5	Amended	187	33	
163-165.7	Amended	187	33	
163-165.9	Amended	187	33	
163-166.3	Amended	187	33	
163-166.4	Amended	187	33	
163-166.12	Amended	187	33	
163-182.12	Amended	187	33	
163-182.13	Amended	150	2	
163-182.14	Amended	150	4	
163-182.15	Amended	187	33	
163-213.4	Amended	187	33	
163-278.6	Amended	150	6	
163-278.6	Amended	187	33	
163-278.8A	Added	150	8	
163-278.8	Amended	150	10	
163-278.9A	Amended	150	11	
163-278.9	Amended	150	9	
163-278.9	Amended	150	9	
163-278.9	Amended	150	11	
163-278.11	Amended	187	33	
163-278.13C	Amended	213	86	
163-278.13	Amended	150	6	
163-278.13	Amended	150	7	
163-278.13	Amended	187	33	
163-278.14A	Amended	150	6	
163-278.16B	Amended	187	33	
163-278.16B	Amended	213	87	
163-278.27	Amended	150	9	
163-278.27	Amended	187	29	
163-278.34	Amended	187	33	
163-278.40J	Added	150	9	
163-278.66	Amended	150	10.2	
163-278.67	Amended	150	7	
163-278.69	Amended	187	33	
163-278.82	Amended	150	10.3	
163-278.92	Amended	150	10.3	
163-278.99A	Amended	150	10.2	
163-278.99E	Amended	187	33	
163-278.110	Amended	187	33	
163-283	Amended	150	5	
163-285	Amended	187	33	
165-20	Amended	107	19.2	
165-20	Amended	187	48	
165-20	Amended	192	11	
165-21	Amended	107	19.2	
166A-14	Amended	200	1	

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